44.F.8A

START

FIRST

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THE NUMBERED PAGES WHICH ARE OTHERWISE BLANK IN

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CENTRAL REGISTRY MICROFILMING UNIT.

CORRECTION

This document has been rephotographed to assure legibility

44.F.7A

COUNTER NUMBER 60490

HOUR 12:30

OPERATOR'S INITIALS CP

RELIEVING OPERATOR AW

CONFIDENTIAL

H.Q.C. 5-F-847

DEPARTMENT OF NATIONAL DEFENCE—OTTAWA, CANADA

SUBJECT

FIELD GENERAL COURT-MARTIAL

FELDMAN, LOUIS A-35108 SPR.

CENTRAL REGISTRY	DATE	R.A. OR D.F.	INITIALS	REFERRED TO	FOR	INITIALS	DATE
				(If purpose for which referred cannot be expressed on one line			4-9-46

CONFIDENTIAL
H.Q.C. 5-F-847

OVERSEAS COMBINED

Correspondence to be PINNED here.

121.4

Army Form A.3.

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

PROCEEDINGS.

A.

Order convening the Court.

On Active Service, this 1st day of May, 1942.

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

And whereas I am of opinion that it is not practicable that such offences should be tried by an ordinary General Court Martial; *[illegible]

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

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

* [illegible]

* Omit if not applicable.

PROCEEDINGS REVIEWED.

[illegible]
Reviewing Officer (No.1 C.M.H.Q.)
23 May 42.

Rank.	President. Name.	Regiment.
Major	R.H. Webb	5 Cdn Med Regt RCA
	Members.	
Rank.	Name.	Regiment.
Lieut.	T. Bricker	42 Cdn Gen Tpt Coy
Lieut.	R.W. Webb	85 Cdn Bridge Coy

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

*Signed (H.F. Leach) Brigadier,
Commanding C.C.M.A. - Cdn Corps
Convening Officer.

SCHEDULE.

Number, Rank (*a*), Name and Unit of Accused (*b*)	Offence charged	*Plea	Finding, and if Convicted, Sentence (*c*)	How dealt with by Confirming Officer (*d*)
A35108 Spr. Feldman, L. 1 Cdn Const Coy RCE	1st Charge: A.A. Sec. 15 (1)	Guilty	Guilty 40 days detention	I confirm finding & sentence

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

(Signed) _____, Brigadier, (Signed) _____
Commanding C.C.M.A. - Cdn Corps — *Convening Officer* (*e*) — *President.*

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

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

B. Certificate of President as to proceedings

I certify that the above Court assembled on the 1st day of May, and duly tried the persons named in the Schedule, and that the plea, finding, and sentence in the case of each such person were as stated in the third and fourth columns of that Schedule.

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

* Omit if not applicable.

Signed this 1st day of May 1942

_____
President of the Court Martial.

C. Certificate in case of death sentences.

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

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

Signed this _____ day of _____ 19 .

_____
President of the Court Martial.

D. Confirmation.

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

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

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

Signed this 6th day of May 1942.

_____ Brigadier
Confirming Officer C.C.M.A. Cdn. Corps.

Promulgated and extracts taken in the case of A 35108 Spr Feldman L.

(*a*) (Dated) 11th May 1942 (Signed) _____

Promulgated and extracts taken in the case of

(Dated) _____ (Signed) _____

Promulgated and extracts taken in the case of

(Dated) _____ (Signed) _____

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

(41235) Wt. 40119—423 500 M 1/43 P. St. G. Ltd.

CHARGE SHEET

The Accused, A35108 Sapper Feldman, L. No.1 Road Construction Company, Royal Canadian Engineers, Canadian Army, Overseas, is charged with:

A.A. Sec. 15(1) While on Active Service absenting himself without leave,

in that he,

absented himself from Hardwick, Oxshott, Surrey, from 0700 hours, 6 April, 1942, until he reported to his billet at Hardwick at 2320 hours, 23 April, 1942. Absent 17 days, 16 hours, 20 minutes.

(W.H. Cuthbertson) Major,
Officer Commanding, 1 Cdn Road Con Coy, RCE

Oxshott, Surrey.

24 April 1942

To be tried by Field General Court Martial.

(R.J. Leach) Brigadier,
C.C.M.A.- Cdn Corps

1 May 42,
#1 R.C.C. RCE OS.

A35108 Spr. Feldman, L.

I hereby certify that I have examined the m/n soldier and find him free from all diseases and in a fit physical condition to undergo trial by Court-Martial.

G.C. Fairfield .....Capt.
(G.C. Fairfield) Med. Offr.
No.1 Road Constr. Coy.,
R.C.E. (O.S.)

The following is a transcription of evidence taken at a Field General Court Martial assembled at H.Q. 7 Cdn A Tk Regt., R.C.A. on 1 May 42 for the purpose of trying one A-35108 Spr. Feldman, L., 1 Cdn Rd Const Coy, RCE.

The convening order was read by the President.

The accused had no objections to being tried by any of the members whose names he had heard read or whom he had seen.

The members of the Court, members attending for instruction, and shorthand writer had already been duly sworn.

The President of the Court then read the charge to the accused, who pleaded "Guilty". The President then cautioned the accused with reference to R.P. 35(B), but he (the accused) declined to change his plea.

The President then asked both the Counsel for the Defence and Prosecution if they agreed to taking the Summary of Evidence as it was and they replied in the affirmative.

First Witness

Lieut. J. S. Parker, No. 1 Rd Const Coy, RCE, having been duly sworn, states:

"I am Lieut. J.S. Parker, No. 1 Rd Const. Coy. I wish to produce copy of M.F.M. 6 of the accused, whom I recognize. It is a true copy of the Regimental Conduct Sheet."

The Defence did not wish to cross-examine.

The Prosecution then produced A.F.B. 296 and submitted it to the Court.

The Defence then calls Cpl Sommerville as character witness, who being duly sworn, is questioned as follows:

Q1: Did the accused at any time tell you he had attempted to join the Field Forces?
A1: He said he did.

Q2: Did he show you certificates of medical unfitness?
A2: Yes, sir, he did.

Q3: Were you an N.C.O. in the same Coy as the accused?
A3: Yes, sir.

Q4: Did you find the accused a good and willing worker, or otherwise?
A4: A good worker, sir.

Q5: During the period of training, did the accused seem to have any difficulty in absorbing instruction re training or was he a bright recruit?
A5: He seemed to have trouble.

At this point the Defence produced two M.F's M. 12 (Certificate of Medical Unfitness for Service in the Canadian Active Service Force. One, dated 1 May 40, stated that Louis Feldman had been found unfit for service by reason of defective teeth. The other, dated 3 Jun 40, states that he (the accused) was found unfit for service by reason of Mitral murmur and Deficient teeth. These certificates were examined by the court and returned to the accused.

The following is a brief summary of the address given by the Counsel for the Defence:

...../2

The accused is of Jewish faith, and as the members of this faith are not very closely connected with soldiering, the accused went to great trouble to join the army, after having been turned down for medical reasons on two different occasions. Finally the accused found a unit who would accept him in view of his medical deficiencies, but after getting into the army he could not easily adapt himself to army life and the responsibilities of being a soldier; but the Defence stated he believed that had since been overcome. The Defence in closing, asked the Court to be lenient in passing sentence, taking into consideration the willingness and determination of the accused to join the army and also his inability to fully understand the seriousness of going A.W.L.

The Court then adjourned for consideration of sentence.

SUMMARY OF EVIDENCE

In the case of No. A-35108 Spr. Feldman, L. of the No.1. Road Constr. Coy., R.C.E. (O.S.).

1st. WITNESS:-

No. A-35033 Cpl. Sommerville, J.D. of the No.1. Road Constr. Coy., R.C.E. (OS), having been duly sworn states:-

"I, A35033 Cpl. Sommerville, J.D., Cpl. in charge of "A" Section of the No.1. Road Constr. Coy., R.C.E., to which the accused Spr. Feldman, L. belongs, called the roll at 0700 hours 6th. April 1942, and found that he was not present. I reported him as absent without leave on the section parade state. I was not present when he returned to his Billets. I did not see the accused from the 6th. April 42, until I saw him in his billets on the 24th. April 1942".

The accused does not wish to cross examine the witness.

J.D. Sommerville
(A35033 Cpl. Sommerville, J.D.)
No.1. Road Constr. Coy., R.C.E. OS.

2nd. WITNESS:-

No. D-18035 Cpl. McHale, J. of the No.1. Road Constr. Coy., R.C.E. (O.S.), having been duly sworn states:-

"The accused Spr. Feldman, L. reported to me at 2320 hours on the 23rd. April 1942. I immediatley placed him under open arrest. At about 1100 hours 24 April 1942, I was ordered to place him under close arrest, and did so at 1300 hours on the 24th. April 1942."

The accused does not wish to cross examine the witness.

J. McHale
(D-18035 Cpl. McHale, J.)
No.1. Road Constr. Coy., R.C.E.(OS)

The accused declines to make a statement.

Taken down by me at 1715 hours this 24th. day of April 1942 in the presence of the accused. Rule of procedure "i" complied with.

J.S. Parker Lieut.
(J.S. Parker) A/Adjt.
No.1. Road Constr. Coy.,
R.C.E. (O.S.)

STATEMENT BY THE ACCUSED.

25th. Apr. 1942.

I, No. A.35108 Spr. Feldman, L. of the No.1. Road Constr. Coy., R.C.E. (O.S.), desire the assignment of an Officer to represent me at my Court Martial.

L. Feldman
(A35108 Spr. Feldman, L.)

COPY.

C.A.S.F.

No. A35108 Name Feldmann, Louis | Sqn., Battery or Company: No.1 Rd. Constr. Coy., R.C.E. Corps | Date of enlistment: 25-6-40 | G.C. Badges | Service or Proficiency Pay | M.F.M. 6 (A.F.B. 122) 500M—8-39-(1701) H.Q. 1772-40-18

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

Place	Date of offence	Rank	Cases of drunkenness	OFFENCE	Names of Witnesses	Punishment awarded	Date of award or of order dispensing with trial	By whom awarded	Remarks
Camp Borden Ontario.	12 Nov 40	Spr.		A.W.L. from 0200 hrs. 12 Nov 40 to 2355 hrs. 12 Nov 40. (Absent 21 hrs. and 55 min.)	A/CSM Carpenter, F.	Forfeits 2 days pay A.A. 46(2)(d).	13 Nov 40.	Major W.H. Cuthbertson.	Forfeits 1 days pay under Art. 149(1)(a) FR&I for C.A.S.F.
Petawawa, Mil. Camp.	3 Feb 41	Spr.		A.W.L. from 0700 hrs. 3 Feb 41, to 0700 hrs. 10 Feb 41. (Absent 7 days)	A/L/Cpl. Middleton, GG	Awarded 10 days detention.	10-2-41	Major W.H. Cuthbertson.	Forfeits 7 days pay under Art. 149(1)(a) FR&I for CASF. Forfeits 10 days pay whilst detention. P.T.O.

Place	Date of offence	Rank	Cases of previous convictions	OFFENCE	Names of Witnesses	Punishment awarded	Date of award or of order dispensing with trial	By whom awarded	Remarks
Crookham	7-5-41.	Spr.		A.W.L. from 2200 hrs. 6 May 41 to 1410 hrs. 7 May 41. (Absent 1 day, 16 hrs. and 10 min.)	A/L/Cpl. Packwood, F.	Forfeits 4 days pay under AA 46(2)(d) C.B.4 days.	9 May 41.	Major W.H. Cuthbertson.	Forfeits 2 days pay under Art.149 (1)(a)FR&I for (OS).
Ont. Camp.	1 Jul 41.	Spr.		A.W.L. from 2359 hrs. 1 Jul 41, to 2350 hrs. 2 Jul 41. (Absent 23 hrs and 51 min.)	C.S.M. Carpenter, F.	Forfeits 3 days pay under A.A.46(2)(d)	3 Jul 41.	Major W.H. Cuthbertson.	Forfeits 3 days pay under Art. 149 (1)(a).

CERTIFIED TRUE COPY.....Major.

(W.H. Cuthbertson) O.C.
No.1 Road Constr. Coy.,
R.C.E. (O.S.)

ARMY FORM B 206.

Statement as to Character and Particulars of Service of Accused.

Number.	*Rank.*	*Name.*	*Regiment (or as the case may be).*
A35[illegible]08	Spr.	Feldman, Louis.	No.1 Road Construction Coy.s. R.C.E. (CS)

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

	*Within last 12 months.	*Since Enlistment
For A.W.L. - 2	times	4 times.
For	times	times.
For	times	times.
For	times	times.
For	times	times.

[illegible] or

2. The accused has not been previously convicted, *or*

~~Previous convictions† of the accused by a court martial or a civil court, summary awards under section 47 of the Army Act, and dispensations with trial under section 73 of the Army Act, are set out in the schedule annexed to this statement.~~

3. The accused is not under sentence at the present time, *or* [illegible] beginning on the [illegible] day of [illegible]

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

5. The present age of the accused according to his [illegible] attestation paper is 32 yrs.

6. The date of his [illegible] attestation specified in his [illegible] attestation paper is 25 June 1940.

7. The service which the accused is allowed to reckon towards discharge or transfer to the reserve is Nil

8. The accused is entitled to deferred pay or gratuity in respect of 22 Months service.

9. The accused is entitled to reckon [illegible] service for the purpose of determining his pension [illegible]

10. The accused is in possession of, or entitled to, no military decoration or military award ([illegible] (*state any military decoration or reward*)).

11. (*If the accused is a warrant officer.*) The accused before he was made a warrant officer last held the regimental rank of N/A

12. (*In the case of an officer.*) The accused holds in the army the rank of N/A dated [illegible] and in his regiment (or corps or department) the rank of [illegible] dated [illegible]

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

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

† See para. 677, K.R., 1940.

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

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

(17514) W.L.32243/901 75,000 12/40 A.A.B.W.Ltd Gp.466

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

No. A35108 Rank Sapper Name Feldman, L. of No. 1 Rd Constr Coy, R.C.E. Regiment (or as the case may be)

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

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

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

Signed this 1st day of May 1942

Major.
(W.H. Cuthbertson) O.C.
No.1 Road Constr. Coy., R.C.E. (OS)

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

In the rank of ____ years ____ days

In the rank of ____ years ____ days

In the rank of ____ years ____ days

(INSTRUCTIONS.—If any entries in any of the above paragraphs cannot be traced from the regimental books the paragraph must be struck through, except that in the case of a trial by field general court-martial the information may be obtained from such sources as are available and the paragraph completed accordingly.)

E/A

Date of Promotion

H.Q.C. 55-F-848 CONFIDENTIAL

DEPARTMENT OF NATIONAL DEFENCE—OTTAWA, CANADA

SUBJECT

FIELD GENERAL COURT-MARTIAL

FARRIS, GEORGE HOWARD A-5519

CENTRAL REGISTRY	DATE	R.A. OR O.F.	INITIALS	REFERRED TO	FOR	INITIALS	DATE
							4-9-46

(If purpose for which referred cannot be expressed on one line, state here "Write Minute")

CONFIDENTIAL
H.Q.C. 55-F-848

OVERSEAS COMBINED

NOTICE

Correspondence to be PINNED here.

495

1st Canadian Armoured Brigade
JUN 25 1942
203-1/1(C)
Headquarters

Army Form A.3.

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

PROCEEDINGS.

A.

Order convening the Court

On Active Service, this SIXTH day of JUNE, 1942.

Whereas it appears to me, the undersigned, an officer in Command of 1 Cdn Armd Bde., 5 Cdn Armd Div., on active service, that the persons named in the annexed Schedule, being subject to Military Law, have committed the offences in the said Schedule mentioned.

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

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

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

*[A Court unable to appoint—

*[Three Officers to form the Court.]

*[Three Field Officers as President.]

*[Three Officers having more than one years service.]

for the following reasons, namely:—]

* Omit if not applicable.

PROCEEDINGS REVIEWED

E.W. Sansom Capt
Asst Judge Advocate
1 Cdn Armd Div
Rear Echelon

President.		
Rank.	Name.	Regiment.
Major	C.H. Campbell	2 Armd Regt (LASH)

Members.		
Rank.	Name.	Regiment.
Capt	T.W. Ball	Westminster Regt (M)
Capt	A.S. Christian	10 Armd Regt (PPCLI)
	WAITING MEMBER	
Lieut	H.B. Welsford	Westminster Regt (M)
	JUDGE ADVOCATE	
Major	M.C. Fraser ADJA	5 Cdn Armd Div.

*Signed H.B. Welsford Brigadier
(H.B. Welsford)
Commanding 1 Cdn Armd Bde
Convening Officer.

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

SCHEDULE.

Number, Rank (a), Name and Unit of Accused (b)	Offence charged	*Plea	Finding, and if Convicted, Sentence (c)	How dealt with by Confirming Officer (d)
A55191 Tpr. (L/Cpl) George Howard FARRIS 6th Armd Regt (IR)	FIRST CHARGE When on active service conduct to the prejudice of good order and military discipline in that he (see charge sheet) Sec 40 AA	not guilty	Guilty	Confirmed [illegible] 1st Armd Bde
	SECOND CHARGE When on active service conduct to the prejudice of good order and military discipline in that he (see charge sheet) Sec 40 AA	not guilty	Guilty	[illegible]
	THIRD CHARGE Absenting himself without leave in that he (see charge sheet) Sec 15(1) AA	not guilty	Guilty To undergo six months detn.	

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

(Signed) J. Rutherford Brigadier (Signed) C.T. Campbell Major
(A. Rutherford) *Commanding* 1 Cdn Armd Bde *Convening Officer* (c) *President.*

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

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

B. Certificate of President as to proceedings.

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

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

* Omit if not applicable.

were duly sworn.

Signed this sixteenth day of June 1942

C.T. Campbell Major
President of the Court Martial.

C. Certificate in case of death sentences.

* See footnote (b) on page 702 M.M.L. 1929.

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

Signed this ~~[illegible]~~ day of 19

C.T. Campbell Major President
President of the Court Martial.

D. Confirmation.

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

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

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

Signed this twentieth day of June 1942.

J. Rutherford Brig
Confirming Officer. 1 Cdn Armd Bde.

Promulgated and extracts taken in the case of A55191 Tpr Farris

(a) (Dated) 23 Jun. (Signed) [illegible] Actg Capt Actg
for Lt. Col. 6th Armd Regt.

Promulgated and extracts taken in the case of

(Dated) (Signed)

Promulgated and extracts taken in the case of

(Dated) (Signed)

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

"G" C.W. Campbell Major
President

CHARGE SHEET

The accused, No. A.55191, Tpr. (L/Cpl.) George Howard Farris, 6 Armoured Regiment (1H), ~~in service~~ overseas, is charged with:-
Can Army

First Charge
Sec 40
Army Act

When on active service, conduct to the prejudice of good order and military discipline -

in that he

Whilst stationed in the field, at about 0320 hrs on the 21st of May 1942, was improperly in possession of one Thomson Sub Machine Gun No. S274609 and 120 rounds of .45 ammunition, one .38 pistol and 5 rounds of .38 ammunition, the same being government property on charge to "C" Squadron -6 Armoured Regiment (1H).

Second Charge
Sec 40
Army Act

When on active service, conduct to the prejudice of good order and military discipline -

in that he

whilst stationed in the field, at about 0325 hrs on the 21st of May, 1942, after approaching the vehicle picquet, A.474 Tpr. McKenzie D.G. and A.102 Tpr. Pardaens A.A., as a friend, forced them at the point of a gun to throw down their arms and forced A.474 Tpr. McKenzie, D.G., to accompany him in Vehicle No. CL 4215679, which he did improperly take, the same being government property on charge to "C" Squadron, 6 Armoured Regiment (1H).

Third Charge
Sec 15(1)
Army Act

Absenting himself without leave -

in that he

whilst stationed in the field, absented himself without leave from about 0330 hrs on the 21st of May, 1942, until apprehended by the Civilian Police about 0445 hrs on the 21st of May, 1942, a period of about one hour and fifteen minutes.

The Field
4 June 1942.

R.S.T. Zack Lt.-Col.
Commanding - 6 Armoured Regiment (1H)

To be tried by Field General Court-Martial

6 Jun/42

[illegible] Brigadier
Commanding - 1 Cdn Armd Bde

MEDICAL OFFICER'S CERTIFICATE

K.R. (Can.) Para 552

I certify that I have this morning examined No. A55171

Spr Travis Hart of 6th Canad Regt (1st) and in my opinion

he is fit to undergo trial by court-martial.

Station Fort Fuel

Date 13 June 17

Medical Officer. R.A.M.S.

C.W. Campbell
Major
President.

MEDICAL OFFICER'S CERTIFICATE

KR. (CAN.) PARA 557

C.S. Campbell
Major
President

I certify that I have this morning examined

No. R.317201 Pte Jones W.G.

of 6 Can. Repl. Regt. (C.A.)

and in my opinion he is fit to undergo

trial by court-martial.

Station. Aldershot

Date. June 15th 42.

W. K. Robertson
Medical Officer
Capt

Trial of A-55191, Tpr.(L/Cpl.) George Howard FARRIS, 6 Cdn Armd Regt (IH).

Held in the Field, 13 June 1942.

PRESIDENT:-
Major C.H.Campbell, 2 Cdn Armd Regt (LdSH).

MEMBERS:
Captain T.W.Hall, Westmr R (M).
Captain A.S.Christian, 10 Cdn Armd Regt (FGH)

JUDGE ADVOCATE:
Major N.C.Fraser, ADJA, HQ 5 Cdn Armd Div.

Prosecutor:- Captain D.F.Seabrook, 6 Cdn Armd Regt (IH).

Defending Officer:- Lieut.J.F.Wilson, 6 Cdn Armd Regt (IH).

Officers Under Instruction:
Lieut.T.O.Cadham, 2 Cdn Armd Regt (LdSH).
Lieut.G.C.Campbell, 6 Cdn Armd Regt (IH).
Lieut.G.W.Pearce, 6 Cdn Armd Regt (IH).
Lieut.W.D.Little, 10 Cdn Armd Regt (FGH).

The convening order is read in the hearing of the accused.

The accused does not object to the President or members of the Court.

The Court, the Judge Advocate, and the officers under instruction are sworn.

The accused answers his name and number and is arraigned on the charges. Charge-sheet marked "G" signed by the President and attached to the proceedings.

PLEA The accused pleads not guilty to all three charges.

R.P. 39 (A) Complied with.

The accused does not require an adjournment.

PROSECUTION

The Prosecutor declines to make an opening address.

The Prosecutor proceeds to call witnesses.

1st WITNESS:
Lieut.A.W.Linnell, 6 Cdn Armd Regt (IH), sworn, states:-

I am Tp Offr, 1st Tp, "C" Sqn, and was Orderly Offr from 1800 hrs 20 May 42 until 1800 hrs 21 May 42. I was awakened by the Corporal of the picquet at 0330 hrs the morning of 21 May 42 who reported that 30 cwt lorry CL-4215679 and a sentry was missing. The sentry was A-474, Tpr.McKenzie, D.J. I informed the Cdn Pro Corps to be on the lookout. I then took the station wagon and proceeded in search of Tpr.McKenzie and the missing veh. I know and recognize the accused as A-55191, L/Cpl. Farris, G.H. He is in my Sqn and was employed in charge of Gun Stores for a period of two weeks immediately prior to this incident. He was well trained and had a good knowledge of weapons.

Cross-Examination:

The accused was a member of my Tp for a period of ten months up until he received his promotion and was employed on general duty. The accused was a smart and intelligent man and I recom-

mended him for his promotion. His employment i/c gunnery stores was only temporary. He is responsible to the Sqn Comd for all stores and all weapons held in the stores.

No re-examination:

Question by the Court:

Q. 1. On the night of 20th to 21st May 42 was L/Cpl.Farris in charge of Gunnery Stores?

A. 1. To the best of my knowledge he was.

R.P. 83 (B) complied with.

The witness withdraws.

The Court, at 12.15 o'clock, adjourned until 2.00 o'clock, 13 June, 1942.

On June 13, 1942, at 2.00 o'clock, the Court re-assembled pursuant to adjournment, present the same members as when adjourned.

2d WITNESS: Capt.W.D.Brooks, 6 Cdn Armd Regt.(IH), sworn, states:-

On the 20th to 21st May I was acting Sqn Comd. On the early part of the afternoon of 21st May 42, Sgt.Element, the Pro Sgt, gave me one sub-M.G. No.274609, one .38 pistol R#551, and six magazines (loaded) sub-M.G. ammn and five rds .38 ammn. I checked at the Gunnery Wing to see if these weapons had been signed for by anyone and found that they had not been signed for.

I recoguize the weapons and ammn as the ones that had been handed me by Sgt.Element.

Weapons and ammunition tendered the Court and Defending Officer. There being no objection, they were entered in evidence as follows:-

Exhibit H - 1 Thompson S.M.G. No.274609.
Exhibit J - 1 .38 pistol R#551.
Exhibit K - 6 magazines S.M.G. (loaded).
Exhibit L - 5 rds. .38 ammn.

Witness continues:

I checked them against the Sqn record book on 21 May 42. They were under the charge of L/Cpl.Farris. I can identify these weapons by the numbers and the ammn is of the same type as was deficient in the Sqn stores. L/Cpl.Farris had been in charge (over to next page).

2nd WITNESS (Cont'd)

charge of these stores for two weeks. I considered L/Cpl. Farris to be capable and of sufficient trust to warrant being in charge of these stores. He is not employed as a driver and is not likely therefore to have had permission to take out the veh that was missing on the night of the 20th and 21st May 42.

CROSS EXAMINATION:

I am directly responsible for these stores. L/Cpl. Farris is my subordinate acting in that capacity and had the only key to the stores. To the best of my knowledge he has always acted in a soldierly manner. There were loaded magazines in Sqn stores at all times.
(In answer to question by theCourt Capt. Brooks replied that L/Cpl. Farris had the only key to that lock.)
No re examination
RP 83 (b) Complied with.

The witness withdraws.

3rd WITNESS:

A-305 Sgt. Element, J., 6th Armoured Regiment (1 H), having been duly sworn, states:-

I am employed as Regtl Prov Sgt. I can identify the accused as L/Cpl. Farris. I saw the accused at the Police Station at Staines on the 21st May 42. He was in custody and I had been sent to bring him back to the Unit.

QUESTION BY COURT:

Q.2.Can you identify exhibits 'H' 'J' 'K' & 'L'?

A.2.I can identify them only as the same number of weapons and type and the amount and type of ammn that I got from the Police Station. I took them directly back to Capt. Brooks. I saw the accused at approx 1030 hrs 21 May42 and he seemed quite normal but confused.

CROSS EXAMINATION:

When I saw the accused he was lying down and was sleeping and when I touched him he appeared dazed and appeared to be suffering from the after effects of liquor. From his appearance I would say he had been on a heavy drinking bout.
No re examination.
RP 83 (b) Complied with.

The witness withdraws.

4th WITNESS:

A-86 Cpl. Noonan, F.J., 6th Armoured Regiment (1 H), having been duly sworn, states:-

On the night of the 20th and 21st May 42 I was Cpl of the picquet. At about 0330 hrs 21 May 42 I was in my own lines. In consequence of a report I received I went and notified the Orderly Offr Mr. Linnell. I checked the vehs to see which one was missing. I found No.GL- 4215679 the 30 cwt lorry missing. I found sixteen rds of .303 ammn and two magazines from Lee-Enfield rifle opposite the Tk hanger across the road and over a fence near where the trucks are parked.

4th WITNESS (Cont'd)

CROSS EXAMINATION:

I saw the accused on my rounds near the veh park at 2340 hrs on the night of 20th to 21st May 42. I would have heard if anyone was trying to start up a veh. The accused was in the driver's seat of a truck. The accused appeared drunk and I thought that it was a good place to leave him to sober up.

No re-examination:

QUESTION BY THE COURT:

On being questioned by the Court the witness states:

The truck in which I saw the accused was not the truck which I later found to be missing.

R. P. 83 (B) complied with.

The witness withdraws.

5th WITNESS: A-102, Tpr.Pardaens, A.A., 6 Cdn Armd Regt (IH), sworn, states:

I can identify the accused as L/Cpl.Farris. I was the picquet on the truck lines on the night of 20th to 21st May 42. I was awakened at 0130 hrs 21 May 42 by L/Cpl. Farris coming in to the Sqn weapon stores where we both slept. L/Cpl.Farrissaid he was going to London, I told him not to be silly. I was due to go on the next shift at 0200 hrs so I got dressed and went out on duty. At about 0300 hrs. I heard the other sentry challenge someone and I heard a lot of talking. I approached and was challenged by Tpr.McKenzie and I also saw and recognized L/Cpl.Farris. As I was just about to go on my beat L/Cpl. Farris brought a Tommy Gun to bear on use and told us to put down our rifles and told me to start up a truck for him. The second truck I got into started. He took us back at the point of the Tommy Gun to where our rifles were and told us to take the magazines out and also the spare clips in our pocket and hand them to him. He then threw them in the field beside the road. He took Tpr.McKenzie, the other picquet, with him at the point of the gun. He said he wouldleave Tpr.McKenzie at Farnham and left with the truck and Tpr.McKenzie. I reported to Cpl.Noonan who was Cpl. of the picquet, as soon as they had gone. L/Cpl.Farris said he had been drinking but he acted very rational. I did not smell any liquor on him.

CROSS-EXAMINATION:

L/Cpl.Farris had no arms or ammn when I first saw him in our quarters at 0130 hrs. I do not know whether or not L/Cpl. Farris had been drinking but I do know from previous experience that L/Cpl.Farris could hold a lot of liquor. I could see no weapons on L/Cpl.Farris when I saw him again later at the veh park.

No re-examination.

R.P. 83 (B) complied with.

The witness withdraws.

Cut

6th WITNESS: A-474 Tpr. McKenzie D.G., 6th Armoured Regiment (1 H), having been duly sworn states:-

I can identify the accused as L/Cpl, Farris. On the night of 20th to 21st May 42 I was Sqn picquet. My beat was at the D. & M. Wing along the truck lines. On my beat around 0515 hrs I heard someone coming down the road. I challenged him and he halted. I recognized him as L/Cpl. Farris. I talked to him for about five minutes. When I asked him what he was doing up he said he could not sleep. Tpr. Pardaens came along and I challenged him and we had a few words with him. L/Cpl. Farris then pointed a Tommy Gun at us and told us to drop our rifles and that he wanted a truck. He marched us over to a 15 cwt truck and told Tpr Pardaens to start it up. It would not start so he told him to get out and marched us down to a 3 ton truck. Then he marched us back to where our rifles were and told us to give him our ammn and spare clip which he then threw over the fence.
There was a magazine on the Tommy Gun so it must have been cocked. He told me he was going to take me for a ride and to get in the truck with him and told Tpr. Pardaens to walk down the road. We drove to Farnham where he let me out at the By-Pass. L/Cpl. Farris was driving and he was a little jumpy when we first started but got better as he went along. He drove fairly slow to Farnham, taking the corners slowly. I had a few words with him on the way in, he said he was going to pay back some money to some fellows in Camp that he owed it to and that he was not a spy or anything like that.

CROSS EXAMINATION:

I did not have a flashlight on myself because there were no batteries in stores. I recognized L/Cpl. Farris because he shone his own light on his face. He shone the light on the Tommy Gun so I was able to see it plainly. I could smell liquor on him but he acted quite national. The truck was being driven jerkily because he was probably not used to driving it. He asked me if I had any cigarettes. As I replied I had not he gave me a few and he said he hoped I got back all right. **No re Examination.**
RP 85 (b) Complied with. The witness withdraws.
The Court at 4 o'clock 13 June 1942 adjourned until 4.15 o'clock 13 June 1942.

On 13 June 1942 at 4.15 o'clock the Court re-assembled, pursuant to adjournment, present the same members as when adjourned.

7th WITNESS: PC-356T Percy Salter, Staines Police Department, having been duly sworn, states:-

At about 4.07 A.M. on the morning of the 21 st May 1942, I was Wireless Operator in the Police Radio Car. I received certain information and proceeded to the Market Square, Staines. At about 4.30 A.M. I heard a motor veh coming from the direction of Egham. It came over Staines Bridge. Thinking it sounded like an army veh we commenced to move from the Market Square into Clarence Street. We then switched on our fog lamp on to the oncoming lorry and we then drove towards it. We noticed it bore the Divisional sign '52'. The lorry at once eased up and swerved into the curb. We drove towards it stopping about two feet in front, thus preventing it coming forward. W.R. Carpenter jumped up on the driver's side and spoke to the driver, at the same time snatching something from the breast of his jacket which I afterwards was a revolver.

CWS

7th WITNESS:(Cont'd)

At the same time as W.R. Carpenter was doing this I noticed P.C. Grant take a tommy gun off the seat beside the driver. I then jumped out of our car and jumped up to the driver but at the same time he opened the door and came out. I asked him who he was and he said "Farris - that's me" and continued his statement he said: "All right I'm unlucky if I could have made London I should have been all right". I then told him I should arrest him and gave him the statutary warning about talking. He said"All right, but I never intended to shoot you guys". He was then placed in the Wireless car by me and taken to Staines Police Station. On the way to the Station he said: "Where did you get the information about me". I answered: "We have certain methods of obtaining it", to which he said: "I suppose your two mates down the road told you", I said: "Were there some more down there then", and he said: "Yes, two of them tried to stop me down the road waving a couple of hurricane lamps, I did ease up and then I thought I'd have a go".

QUESTIONS BY THE COURT:

Q. 3. Did the accused seem under the influence of drink?
A. 3. No, he appeared quite normal.

Q. 4. Could you give an observation as to his condition?
A. 4. He appeared quite normal.

Q. 5. Can you identify the accused?
A. 5. Yes (The witness then identified the accused).

Q. 6. Can you identify Exhibits 'H' & 'J' ?
A. 6. No, but they are similar in type to those removed from the accused.

CROSS EXAMINATION:

Q. 7. When you stopped the veh did you notice anything about
A. 7. the condition of theaccused that might prevent him from using the weapons in his possession to frustrate apprehension?
A. 7. No, he was unable to do so because the other Police Constables were too quick.

Q. 8. Regardless of the quickness of the other Police Constables don't you think a normal person might do something when a light was suddenly flashed on him?
A. 8. No sir.

Q. 9. Was there any alteration of his condition in your opinion from the time he was apprehended until he was placed in the Staines Police Station?
A. 9. No sir.
No re Examination;
RP 68 (b) Complied with.

The witness withdraws.

CROSS

8th WITNESS: P.C. 143T Charles Linsdell, Staines Police Department, having been duly sworn, states:-

I can identify the accused. At 0407 A.M. May 21st 1942, in consequence of a message received I proceeded to Staines Market Square and waited for the approach of a Cdn Army Motor veh that was approaching Staines from Farnham. At about 4.30 A.M. an army veh driven by the accused came over Staines Bridge in the direction of London. I had previously elevated the fog lamp of the car and having switched it on drove up the street in the direction of the oncoming veh. The light of the fog lamp compelled the driver to stop the veh. W.R. Carpenter went to the off-side of the veh and opended the door. I saw him put his hand into the veh and then I noticed he was then in possession of a revolver. At the same time I saw the accused turn to his left and P.C. Grant who was on the near-side when the door opened took a Tommy Gun from the cab of the veh. By this time P.C. Salter had got out of the car and had approached the driver. P.C. Salter then placed the accused under arrest. I then conveyed P.C. Salter and the accused in the car to the Police Station. I drove in the Army veh to Staines Police Station and was present when the gas mask case of the accused was searched and the loaded S.M.G. magasines found there. The revolver was loaded and there was a loaded magazine attached to the Tommy Gun. I removed the magazine from the Tommy Gun under instructions given by the accused.

QUESTIONS BY THE COURT:

Q .10. Can you identify Exhibit 'H' ?
A.10. It is probably the same one.

Q.11. Can you identify Exhibit 'J' ?
A.11. It is the same type as taken from the accused.

Q. 12. Was the S.M.G. cocked?
A. 12. Yes.

Q. 13. Would you say that the accused was under the influence of drink?
A. 13. Definitely no, Sir.

CROSS EXAMINATION:

Q. 14. How far away was the army veh when you first shone your fog lamp towards it?
A. 14. It was about 75 to 100 yards away.

Q. 15. At that range would the lamp blind a person?
A. 15. Not until he came closer.

Q. 16. Did the accused have any weapon in his hand when you approached the veh?
A. 16. I never saw one.

Q .17. When you spoke to the accused what was his condition?
A.17. He appeared quite rational.

Q .18. Did you see the accused later on?
A.18. Yes, about three hours later.

Q .19. Had his mental condition changed?
A.19. No, he appeared the same.

Q.20. Was there at any time any smell of liquor on his breath?
A.20. I never noticed any.

Q.21. Any time you had conversation did he mention the fact that he had previously been drinking?
A.21. No, Sir, he never spoke on the way down to the station.

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CWS

8th WITNESS (Cont'd) No re Examination.

RP 83 (b) Complied with.

The witness withdraws.

9th WITNESS: W.R. 925T Reginald Carpenter, Staines Police Department, having been duly sworn, states:-

I can identify the accused. On the 31 May 1942 at 4.10 A.M. I was on patrol at the High Street, Staines, when the wireless car stopped and gave me certain information. I then took up a position at the Market Square. At about 4.30 A.M. a lorry came over Staines Bridge. The fog lamp from the Police car was shone upon him and we identified the veh as a military lorry. I waved my hand lamp at the same time as the fog lamp was shone on him and he stopped. I snatched a revolver from the breast of his jacket. The engine of the truck was still running so I ordered him to switch it off. At that time P.C. Grant leaned from the near-side of the truck and removed the S.M.G. The driver of the wireless car pulled away from the accused and told him to get out of the truck. I then handed the accused his gas mask. The drive of the wireless car at that time rendered his S.M.G. harmless. P.C. Salter then said to the accused: "I am placing you under arrest". I remained in charge of the military veh and the accused was taken to Staines Police Station.

QUESTIONS BY THE COURT:

Q.22. Can you identify Exhibits 'H' & 'J'?
A.22. They are similar to those weapons taken from the accused.

CROSS EXAMINATION:

Q.23. The driver of the wireless car ordered the accused to dismount. Who placed him under arrest?
A.23. I believe P.C. Salter, made the formal arrest.

Q.24. Were you on foot when the wireless car first accosted the lorry?
A.24. Yes.

Q.25. Had the lorry already stopped when you reached it?
A.25. No.

Q.26. Did the accused have any weapons in his hand?
A.26. No, sir but they were handy.

Q.27. Do you consider they were within reach?
A.27. Yes.

Q.28. Was the accused in any upset state or any other unusual condition?
A.28. No, sir he was not in any way under the effects of liquor or drugs.

Q.29. Could you give any further explanation of his condition?
A.29. He gave the appearance and actions of a man recovering from previously drinking.

No re Examination.

RP 83 (b) Complied with.

The witness withdraws.

10th WITNESS:

P.C. 962T Grant, George, Staines Police Department, having been duly sworn, states:-

I can identify the accused. At about 407 A.M. 21 May 1942 I was on duty in the Market Square, Staines, when I received a message from Staines Police Station. I immediately stood out in the middle of the road. A few moments later the Police radio car arrived at Market Square and gave me the same information I had already received. We all took up positions at that point. At about 4.30 A.M. an army lorry proceeded over Staines Bridge towards us at a very past pace. P.C. Linsdell the driver of the Police wireless car immediately switched his spot light on the oncoming veh and drove towards it. I walked to the near-side of the veh and identified it by the number '52' on the near-side front mud-guard. The driver was dazzled by the light and was forced to pull up. I then noticed the accused had a revolver stuck in the front of his tunic which was undone at the neck. W.R. Carpenter was at that moment by the side of the driver, then I saw him pull the revolver away. At the same moment I got hold of the Tommy Gun which was on the seat besides the driver and handed it ot P.C. Linsdell. The accused was then out of the lorry and on his instructions P.C. Linsdell unloaded the Tommy Gun. He was then taken to Staines Police Station where he was detained.

QUESTIONS BY THE COURT:

Q. 30. Can you identify exhibits 'H' 'J' 'K' & 'L'?
A.30. They are similar in type and number to those weapons and amun removed from the accused.

Q.31. Did you have any conversation with the accused?
A.31. Not in the car.

Q.32. Did he act normal?
A.32. Yes he acted quite normal.

CROSS EXAMINATION:

Q.33. Were you first to approach the army veh?
A.33. Yes, sir.

Q.34. Had the accused any weapon in his hand?
A.34. No, sir.

Q.35. Was anything peculiar about the accused?
A.35. No, sir only he seemed surprised.

Q.36. What would make him surprised?
A 36. The light seemed to have dazzled him and he wondered what it was all about.

Q.37. Would he have had any warning that he was in for a bit of trouble?
A.37. Yes, sir.

Q.38. Did you observe any reaction that might cause him to make no effort to avoid resistance?
A.38. He had no chance to make any effort to avoid resistance.

Q.39. Did you smell any liquor on the accused?
A.39. None whatsoever.

Q. 40. Did he act any differently in your presence at the Police Station?
A. 40. No sir.

Q. 41. Did the accused sleep at any time?
A. 41. Not to my knowledge up to 7 A.M. 21 May 42 when I went off duty and left the Police Station.

No re-examination.

R.P.83 (B) complied with.

The witness withdraws.

At 6.00 o'clock the Court adjourned until 2.00 o'clock, 15 June, 1942.

On 15 June 1942, at 2.00 o'clock, the Court re-assembled pursuant to adjournment, present the same members as when adjourned.

The Prosecution is closed.

D_E_F_E_N_C_E

R.P. 40 (A) and (B) and Note 2 to R.P. 40 (A) complied with.

The accused states he desires to give evidence on oath and desires to call no other witnesses in his defence.

A-55191, Tpr.(L/Cpl.) George Edward Farris, 6 Cdn Armd Regt (RCD) sworn, states:

After duty on 20 May 1942 about 1800 hrs I left the Sqn lines with two friends and went to a pub in Tilford called the Barley Mow. It was not open so we waited until it did open at 7 o'clock. We stayed in there drinking until ten o'clock when it closed. After it closed we went out in front and there were some soldiers from the Highland Div that I had met while I was in there. One of them had a bottle and we proceeded to finish drinking it. Then we walked across the green to the Tilford Town Hall to a dance there. I remember entering the dance hall but do not recall leaving. The next thing I knew I was sitting at a desk sleeping and was awakened by a policeman, I asked him if I was in Farnham. He replied that I was in Staines. He then tried to give me an idea of what had happened the night before. From there I was taken to another Police Station closer to London, the name of the town I do not know. I ate breakfast there and went to sleep in a cell. I was then awakened later by Sgt.Clement and brought before Capt.Brooks, "C" Sqn. That is all my evidence.

Questioned by Defending Officer:

Q. 42. On the night previous to 20-21 May were you on duty?
A. 42. Yes, I was Corporal of the picquet.

Q. 43 Did the previous night's duty entail your going without sleep?
A. 43. The picquet goes on at 1800 hrs and is on till 0600 hrs. the following morning. It is in Sqn orders that the Cpl of the picquet must stay awake all night.

Q. 44. In your capacity in the gunnery stores in "C" Sqn, what is your usual procedure followed when another guard commander comes to draw a pistol.
A. 44. I issue him a pistol and ammunition for it and 30 rounds ammn for the picquets' rifles.

Q. 45. Were there always loaded magazines in the stores?
A. 45. Yes. We were on Security Guard which went on Wed evening at 1800 hrs 20 May.

Q. 46. At any time around the 20-21 May did you have a leave coming up?
A. 46. I had a leave coming in June and was trying to get it fixed up for the middle of June which was my birthday.

Q. 47. At that time were you aware of the fact that there was money being sent you?
A. 47. Yes, I had been written and told that it was coming.

Q. 48. Was there any special spot to which you had intended going?
A. 48. Yes, to London.

Q. 49. What is your nationality?
A. 49. American.

Q. 50. How long have you been in the Canadian Army?
A. 50. 14 Months on 7 Jun 42.

Cross-examination:

Q. 51. When you were [redacted] of the picquet you say you had to stay awake from 1800 hrs until 0600 hrs the next morning; did you not have a chance to sleep from 0600 hrs till 1330 hrs the same day?
A. 51. In my position I had no chance to get any sleep because of being in the stores and people coming in and out.

No re-examination:

Questioned by the Court:

Q. 52. How old are you?
A. 52. I will be 26 on 16 Jun.

Q. 53. What had you been drinking?
A. 53. I usually drink beer with a double or single gin in it.

Q. 54. Do you know how many you had drank?
A. 54. No, I do not know.

Q. 55. Do you know what was in the bottle which you drank outside the pub?
A. 55. I do not know if it was brandy or whiskey.

Q. 56. How many drinks did you have out of the bottle?
A. 56. I could not say.

Q. 57. To what extent do you usually drink?
A. 57. I usually stick to beer.

Q. 58. Have you at any time while drinking had any experience with blackouts?
A. 58. Yes.

Q. 59. How long have they lasted?
A. 59. Sometimes until morning but I usually manage to get home.

CWR

Q. 60. Do you not recollect anything of that incident on the night of 20-21 May?
A. 60. No.

Q. 61. How much money did you draw on pay parade 15 May?
A. 61. I drew in the neighbourhood of three pounds.

Q. 62. How much money did you have on the night of the 20th
A. 62. I had almost two pounds. I had borrowed one pound from a fellow.

Q. 63. How much did you have the next day?
A. 63. In the neighbourhoos of three to five shillings.

Q. 64. Do you remember the earlier part of the evening in the pub ?
A. 64. Yes, because the majority of our Sqn was there.

Q. 65. Did you buy any other fellow a drink?
A. 65. I tossed with one fellow three times amd won and lost one toss later.

Q. 66. Have you any idea of the time you left the dance?
A. 66. I do not know, I couldn't even find out from any of the other fellows. I couldn't have stayed there any later than twelve because the dance closed then.

Q. 67. During the time from between 11-12 until 7 the next morning you have no recollection of events?
A. 67. No, I have not.

R.P. 83 (B) complied with.

The witness resumes his seat as the accused.

The Court,at 3.10 o'clock, adjourned until 3.30 o'clock, 15 June 1942.

On 15 June, 1942, at 3.30 o'clock, the Court re-assembled pursuant to adjournment, present the same members as when adjourned.

Prosecutor's Address:

The Prosecutor addressed the Court, reviewing the evidence on all three charges. He pointed out that the accused was placed in a position of trust in Sqn Gunnery Stores and had abused that trust by taking certain weapons in his charge and using them to force a vehicle picquet to give him a truck.

The Tommy gun was loaded and cocked, the two soldiers on the vehicle picquet might have been seriously injured. The evidence of the police was that the accused was quite normal and knew what he was doing.

He directed attention to the evidence that the accused had been able to give very precise instructions on how to unload and cock the Tommy gun.

The Prosecutor also referred to and read K.R. (Can.) 555 on drunkenness.

Defending Officer's Address:

The Defending Officer reviewing the evidence stated that the accused had had too much to drink. His ability to demonstrate the mechanism of a machine gun has no significance, as sometimes a person remains physically capable when so intoxicated that the mental processes are obscured.

The only logical explanation for his conduct is the one he has given that he had so much to drink that he suffered a mental blackout. That is consistent with the other evidence which showed his behaviour to have followed a pattern typical in such cases, that is:-

(1) Obvious drunkenness.
(2) Actions performed without signs of drunkenness with no logical purpose.
(3) A hang-over.

There can be no reasonable purpose in the conduct of the accused as he had a leave coming up in the ordinary way and had arranged financing for that leave. Therefore there was no need or sensible reason for him to do any of these acts of violence.

Summing up by Judge-Advocate:

The Judge Advocate in summing up explained the respective duties of the Court and the Judge Advocate. In dealing with drunkenness as a defence he read MML, Chap VII, paras 6, 8 and 9; Chapt III, para 48; and AA 130 (2) and explained the same, also presumption of innocence, onus of proof, and reasonable doubt.

The Court is closed for the consideration of the finding.

FINDING. The Court find that the accused, A-55191, Tpr.(L/Cpl.) George Howard Farris, 6 Cdn Armd Regt (IH) is guilty of all three charges.

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

Captain D.F.Seabrooke, 6 Cdn Armd Regt (IH), the Prosecutor, sworn, states:- I produce M.F.B. 355 and certified true copy of M.F.M. 6, which I have compared with the Regimental Books and which are true statements as to character and particulars of service of the accused. Documents read, marked "Y" and "Z" respectively, signed by the President and attached to the proceedings.

No cross-examination.

The accused states he does not desire to give evidence or to call witnesses as to character, or in mitigation of sentence but that he desires the Defending Officer to make a plea for leniency.

The Defending Officer made a plea for leniency based on:

(1) Length of good service.
(2) Previous apparent desire to get ahead. Promoted to L/Cpl.
(3) Position of trust in Tech Stores.
(4) Voluntary enlistment in the Canadian Army while not a citizen of Canada.

C105

(5) L/Cpl.Farris was a very popular man in his Sqn and it is well known that anyone having criminal tendencies is not likely to be popular.
(6) The strain of being away from his home and his friends and having indulged in the use of alcohol and its effects on the actions of the accused.

The Court is closed to consider the sentence.

SENTENCE — The Court sentence the accused, A-55191, Tpr.(L/Cpl.) George Howard FARRIS, 6 Cdn Armd Regt (IH) to undergo detention for six (6) months. — Sentence: Detn. 6 mos.

CERTIFIED A TRUE RECORD OF THIS TRIAL, this 15th day of June, 1942.

C Campbell Major
President.

V

C.R. Campbell Major, President

M.F.B. 355
H.Q. 1772-39-620
10M-8-40 (M19)

STATEMENT AS TO CHARACTER AND PARTICULARS OF SERVICE OF ACCUSED

Number	Rank	Name	Regiment (or unit)
A.55191	Tpr. (L/Cpl.)	George Howard Farris	6 Armd Regt (1 Lt)

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

	Within last 12 months	Since enlistment
For A.A.A. 15(1) A.W.L.	times	times
For A.A.A. 40 "Conduct to the Prejudice"	times	times
For	times	times
For	times	times

~~Entries of instances of gallantry or distinguished conduct~~

or,

~~There are no entries in the conduct sheet of this accused~~

~~Note: If the charge is for drunkenness, the entries for drunkenness must be stated separately.~~

2. ~~The accused has not been previously convicted~~

or,

~~Previous convictions of the accused by a court-martial or a civil court, or summary awards under Air Force Act / Army Act Section 47 of the Army Act and dispensations with trial under Rule 76 are set out in the schedule annexed to this statement.~~

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

or,

~~The sentence at the present time is under sentence for [illegible] beginning on the [illegible]~~

4. The accused has been in confinement awaiting trial on the present charges, for -NIL- days in civil custody, and 19 ~~26 days~~ days in military custody, making a total of ~~19~~ 26 ~~days~~ days in custody, of which nil days were spent in hospital.

5. The present age of the accused according to his ~~record of service~~ attestation paper is 26 years

6. The date of his ~~commission~~ specified in his record of service / attestation paper is 14 Apr 41

7. The service which the accused is allowed to reckon towards discharge is 428 days

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

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

~~10. [illegible]~~

11. (In the case of an officer.) The accused holds in the Royal Canadian Air Force the [redacted] of
Permanent Force
unit
.....dated....., and in his regiment (or corps), the rank of
.....dated.....

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

.....Date of promotion.

In the rank of.....years.

In the rank of.....years.

In the rank of.....years.

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

SCHEDULE

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

Name.....of.....Regiment

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

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

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

Signed this Thirteenth day of June 1942.

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

(M.H.Sobalek) Captain & Adjutant
[redacted], 6 Armd Regt (1H)

Previous Sheet destroyed 20-10-41 "W.C.A. Lambe" Capt.

No. A.55191 Name FARRIS George Howard Sqn., Battery, or Company C Corps 6 Armd Regt (IH) Date of enlistment 18-4-41 G.C. Badges Service or Proficiency Pay

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

M.F.M. 6 (A.F.B. 122) 20M—11-40 (3025) H.Q. 1772-43-18

Place	Date of offence	Rank	Cases of drunkenness	OFFENCE	Names of Witnesses	Punishment awarded	Date of award or of order dispensing with trial	By whom awarded	Remarks
Aldershot	1941 3 Nov	Tpr.		Conduct to the Prejudice of good order and Military discipline when ordered to get out of Bed at 0815 hrs he failed to do so.	Cpl. A.R. Streib Cpl. A.H. Clarke	Admonished	1 Dec 41	"J.W. Graham" Major	"JWG" Maj.
U.K.	1942 3 Jan			AWL from 0630 hrs 3-1-42 to 2340 hrs 4-1-42 (1 dy 17 Hrs 10 Min)	Sjt. McLellan	18 dys Detn	1100 hrs 4 Jan 42	"R.H.Back" Lt.-Col.	"JSH" Capt.

Certified True Copy 10 Jun 42.

G. Campbell Lieut.
(G.C. Campbell) Asst/ Adjt.
6 Armd Regt (IH)

C.W. Campbell Major
President

(P.T.O.)

H.Q.C. 55-F-849

CONFIDENTIAL

DEPARTMENT OF NATIONAL DEFENCE—OTTAWA, CANADA

SUBJECT

FIELD GENERAL COURT-MARTIAL

FARRER, J. C-6066 PTE.

CENTRAL REGISTRY	DATE	P.A. OR D.P.	INITIALS	REFERRED TO	FOR	INITIALS	DATE
					(If purpose for which returned cannot be answered on one line, write here "With Minute")		4-9-46

CONFIDENTIAL
H.Q.C. 55-F-849

OVERSEAS COMBINED

NOTICE

Correspondence to be PINNED here.

174

131.C.

Army Form A.3.

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

PROCEEDINGS.

A. Order convening the Court.

On Active Service, this Fifteenth day of June, 1942.

Whereas it appears to me, the undersigned, an officer in Command of 1 Can Inf Bde, on active service, that the persons named in the annexed Schedule, being subject to Military Law, have committed the offences in the said Schedule mentioned.

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

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

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

~~*I am unable to appoint~~

~~*1. Three Officers to form the~~

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

~~for the following reasons, namely~~

PROCEEDINGS REVIEWED

* Omit if not applicable.

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

President.

Rank.	Name.	Regiment.
Major	J.C.P. Armstrong	48 Highrs

Members.

Rank.	Name.	Regiment.
Capt	F.T. Forgrave	RCR
Lieut	G.S. Whitelaw	48 Highrs
~~Lieut~~	~~J.G. McLean~~	~~Hast & PEI~~
~~Lieut~~	~~W.O. McLean~~	~~Hast & PEI~~

Waiting Member

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

*Signed [signature] (R.E.D. Keller) Brig.,
Commanding 1 Can Inf Bde
Commanding Officer.

SCHEDULE.

Number, Rank (a), Name and Unit of Accused (b)	Offence charged	*Plea	Finding, and if Convicted, Sentence (c)	How dealt with by Confirming Officer (d)
C.6066 Pte Farrer, J. Hast & PER	(1) WOAS absence without leave, in that he, in the Field absented himself without leave from 2300 hrs 1 May 42 until 2145 hrs 20 May 42 (AA Sec 15 (1))	Guilty	Guilty	I confirm the Finding & Sentence of the Court. J.S.H.
	(2) WOAS breaking out of barracks, in that he, In the Field on 3 Jun 42 broke out of barracks when his duty required him to be in barracks. (AA Sec 10 (4))	Not Guilty	Guilty 60 days detention J.S.H.	

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

(Signed) (A.L. Keller) Commanding 1 Can Inf Bde Confirming Officer (c)

(Signed) J.S. Armstrong Major 48th Highrs of Can President.

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

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

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

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

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

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

B. Certificate of President as to proceedings.

I certify that the above Court assembled on the 19th day of June 1942, and duly tried the persons named in the Schedule, and that the plea, finding, and sentence in the case of each such person were as stated in the third and fourth columns of that Schedule.

I also certify that :—

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

were duly sworn.

* Omit if not applicable.

Signed this 20th day of June 1942.

J.S. Armstrong Major
President of the Court Martial.

C. Certificate in case of death sentence.

* See footnote (b) on page 702 M.M.L. 1929.

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

~~Signed this 20th day of June 1942~~

~~J.S. Armstrong Major~~
President of the Court Martial. J.S.H.

D. Confirming Officer.

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

~~*I direct that the soldier named in the margin be committed to prison or detention barrack until further orders.~~

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

Signed this 6th day of July 1942.

A.L. Keller Brig.
Confirming Officer. Comd., 1 Can. Inf. Bde.

Promulgated and extracts taken in the case of C. 6066 Pte. Farrer J.

(a) (Dated) 13 Jul. 42 (Signed) B Graham LT. COL.
COMDG. THE HASTINGS & PRINCE EDWARD REGT. C.A.S.F.

Promulgated and extracts taken in the case of

(Dated) (Signed)

Promulgated and extracts taken in the case of

(Dated) (Signed)

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

STATEMENT IN ACCORDANCE WITH R. OF P. 14 (b)

I, C.6066 Pte. Farrer, J. desire to have an officer assigned to represent me at my trial by Court Martial, and desire the service of Lieut. Goodman, R.C.H.A. if he is available.

4 June 1942.

Pte. J. Farrer

C.6066 Pte. Farrer, J.
Hast. & P.E. Regt.

STATEMENT IN ACCORDANCE WITH R. OF P. 14 (B)

I, C6066 Pte. Farrer, J. desire to have an officer assigned to represent me at my trial by Court Martial, and desire the services of Lt. J.C. Armstrong, Hast. & P.E.Regt. if he is available.

Pte J Farrer

C6 066 Pte. Farrer, J.
Hast. & P.E.Regt.

"In the Field"
17 Jun 42.

CHARGE SHEET

The accused, C.6066 Pte Farrer, J. a soldier of the Hastings and Prince Edward Regiment, C.A. (A.F.)

is charged with:

1st Charge AA Sec 15 (1) WOAS absence without leave in that he, in the Field absented himself without leave from 2300 hrs 1 May 42 until 2145 hrs 20 May 42

(Contrary to AA Sec 15 (1))

2nd Charge AA Sec 10 (4) WOAS breaking out of barracks in that he, In the Field, on 3 Jun 42 broke out of barracks when his duty required him to be in barracks.

(Contrary to AA Sec 10 (4))

(H.D. Graham) Lt.-col
Commanding,
The Hastings & Prince Edward Regiment
C.A. (A.F.)

In the Field
4 Jun 42

TO BE TRIED BY FIELD GENERAL COURT MARTIAL

(R.F.L. Keller)
Brigadier
Comd, 1 Cdn Inf Bde

CORRECTION

This document has been rephotographed to assure legibility

I, the undersigned state that G6066 Ite. Farrer, J.
is medically fit to undergo a Field General Court Martial.

19 Jun 42

Capt.
Medical Officer
Hast. & P.E.R. Dist.

Proceedings of a Field General Court Martial held at
In the Field on the 10th day of June 1942.

President..Major J.G.F.Armstrong 48th Highlanders of Canada
Member.....Capt.F.M.Forgrove Royal Canadian Regiment
Member.....Lieut.C.S.Whitelaw 48th Highlanders of Canada
Waiting Member.....Lieut.W.O.McLean Hastings&Prince Edward Regiment

The Court having been duly assembled, it was proved to be legally constituted and convened in accordance with The Army Act.

The Order assembling the Court was read by the President in the presence of and hearing of all the accused and counsels for the Prosecution and the Defence.

All the accused having been asked by the President " Do you take exception to any member of this Court trying you?" and having been replied to by all the accused in the negative, the members and waiting member of the Court were duly Sworn in.

The President of the Court was duly Sworn in.
The Clerk of the Court was duly Sworn in.
The Court was then cleared.

Proceedings of a Field General Court Martial held at
In The Field on the 19th day of June 1942.
Proceedings in the case of
C6066 Pte.Farrer,J. of the Hastings & Prince Edward Regiment.

The accused answers to his Name No. Rank and Unit and is duly arraigned on the charges.

Question. "Do you plead Guilty to Charge No.1. ?"
Answer. "Yes,Sir."
Question. "Do you plead Guilty to Charge No.2.?"
Answer. "No, Sir."
In accordance with Rule of Procedure 37(a) Charge Two is proceeded with.
In accordance with Rule Of Procedure 39(a) the accused is asked -
"Do you wish to apply for an adjournment on the ground that any of the rules relating to procedure before trial have not been complied with, and that you have been prejudiced thereby, or on the ground that you have not had sufficient opportunity for preparing your defence ?"
Answer. "No,Sir".

Prosecutor. "In the case of the second charge I propose to call two witnesses who will prove the accused guilty.

1st.Witness C5140 Cpl.Craddock,K., having been duly sworn states:-
"On the night of June 3 1942 I was given a list of men for fatigue duty including Pte.Farrer. Our duties were to carry chairs and ammunition. I put L/Cpl. Cole in charge of the ammunition carrying party. At about 1800 hours I called him L/Cpl.Cole away to give him details of another duty. A short while later he returned to me and told me that the job had been completed but that the men were missing. We reported this fact to C.S.M.Turner,Sir."

Question by President. "Did you detail Pte.Farrer for duty on June 3rd.?"
Answer. "Yes,Sir."
Question. "Did he stay till that duty was completed?"
Answer. "Yes, Sir, he completed two tasks."
Question. "Did he complete second task?"
Answer. "Yes,Sir, but he was not dismissed and could not be found in billets."
Question by Defence. "When you were given the list of men for fatigue, were any of them under close or open arrest to your knowledge?"
Answer. "I do not know, Sir."
Question. "Were they given one or two tasks?"
Answer. Two,Sir."
Question. "Do you consider that the accused did carry out the duties?"
Answer. "Yes,Sir."
Question by President "The point raised by your evidence is that the accused failed on the completion of the second task to report to the N.C.O. in charge. Is that right?"
Answer "Yes,Sir."

2nd.Witness - C4919 L/Cpl.Cole,G. having been duly sworn states:-
"On the night of June 3rd. I was in charge of a party of fatigue men which included Pte.Farrer, and was detailed to carry ammunition. Cpl. Craddock called me away to give me details of another job to be done. Whenm I came back the job was done, but Farrer was missing.

Question by President. "Have you any reason to feel that Pte.Farrer might feel that he was free after this job had been completed?"
Answer. "I expected to find him there as I did not expect the job to be done."
Question. "What did you do when you found Pte.Farrer missing?"
Answer. "I reported the fact to Cpl.Craddock."
Question. "Do you usually expect the men under you on such a fatigue party as this, to wait until you dismiss them or to leave when the job is finished?"
Answer. "I expect them to be dismissed,Sir."
Question by Defence "When you were called away did Cpl.Craddock detail accused to another job?"
Answer. "Not to my knowledge,Sir."
Question. "Was the accused said to be under arrest and to be watched?"
Answer "Not to my knowledge,Sir."
Question. "How many other men were in your party?"
Answer. "Two Sir."
Question. "Were they waiting for you?"

Answer. "No,Sir."
Question "Was the accused required to do any other job?"
Answer "I don't know, Sir."
Question "Had you knowledge of any other job?"
Answer "Not until told so by Cpl.Craddock."
Question "Did you have another job?"
Answer "Yes,Sir."
Question by President "At what time did men finish job of carrying ammunition?"
Answer "At approximately 1800 hours, Sir."
Question "Did you look for this man?"
Answer "Yes,Sir."
Question "Did you find him?"
Answer "About 45 minutes later in the Guard Room."
Question by President "There was a fatigue party detailed for all work to be done during the afternoon. Is that right?"
Answer "Yes, Sir. Cpl.Craddock was in charge and he detailed me to look after the ammunition party.

Question by Capt.Forgrave "Was the task for just carrying ammunition or for some definite time?"
Answer "I was not told,Sir."

Statement by the Prosecutor - "I think that the evidence has proved that the accused was on duty at the time. It is common knowledge in the Army that task jobs must be inspected. The accused was on duty and he did leave without permission. After the exercise TIGER it was necessary to have plenty of work in the nature of odd jobs done about the Billets and the accused evidently left the job detailed to him. I therefore consider that he is guilty.

Statement by the Defence - "In reference to the exercise TIGER the accused had been on the exercise had had marched back, he also had had finished his tasks and felt that he had finished his duty. I further submit that men of the Canadian Army are familiar with task jobs and usally carry on until finished, when they feel that the job is then completed. He had been released from arrest without prejudice and therefore felt that he had no right to be imposed upon because of his former absence without leave."

Prosecutor "I submit that the accused made no attempt to see if there was other work to be done."

Court adjourned for study of Charge Two.
Court re-assembled to hear evidence on charge One.

Question by President "Do you plead Guilty or Not Guilty to the first charge?"
Answer "Guilty,Sir."
Summary of Evidence was read to the accused.
Question "Do you agree that this evidence is in order?"
Answer "Yes,Sir."
Question "Do you wish to make a statement under oath or to be represented by your counsel?"
Answer "Under oath,Sir."

The accused was duly sworn, and having been sworn states:-
"There was some sort of a mix-up and when I returned from being A.W.L. for 18 days the regiment had left on a scheme. Pte.Beecher asked if we could be allowed to rejoin our unit for the scheme, but we were not allowed to do so. I was tried by Major Fletcher of the "WOLF" Bn. and released without prejudice and we were free to carry on in the usual way. Then we were sent to the Unit and did the march back. I feel that on my return I was "rode" by the C.S.M. On previous occasions the whole company had helped to carry the ammunition into the stores. Taht is all I have to say, Sir."

Prosecutor "I do not wish to cross examine the accused,Sir."
Defence "I have nothing further to say,Sir."
Prosecutor presents Statement of Character and Conduct Sheet to the Court.
Prosecutor. "I would like to point out that Farrer has already said that he was A.W.L. It is true that he was released without prejudice but this was not known to us until 3 or 4 days after our return to Billets as the papers were not handed over to us until that time, and so we did not know that he was not under arrest. He knew of the coming scheme and went A.W.L. before it. He has a bad record of absence without leave."
Accused "I went A.W.L. 18 days before TIGER and therefore did not go away because of it".

Summary of Evidence in the case of C.6056 Pte. Farrer, J. "D" Coy., Hastings and Prince Edward Regiment, C.A.(A.F.)

1st charge
1st witness

C.4916 Cpl. Thurston, S.R. Hastings and Prince Edward Regt. having been duly sworn, states:

I am and was at all times material hereto a Cpl. of No. 16 Pl. "D" Coy., Hast. & P.E.R.
On 1 May 42 I was C.O.S. When tattoo was called Pte. Farrer was absent. He was due back from 48 hrs. leave at 2300 hrs. 1 May 42. Pte. Farrer reported back to L/Cpl. Gallant at 2145 hrs. on 20 May 42. (Documentary evidence)

The accused declines to cross examine the witness.

C.4916 Cpl. Thurston, S.R.
Hast. & P.E.R. Regt.

2nd charge
1st witness

C.5140 Cpl. Craddock, K. Hastings and Prince Edward Regt., having been duly sworn, states:

I am and was at all times material hereto a Cpl. of No16 Pl. "D" Coy., Hast. & P.E.R.
On 6 June 42 I was A/C.O.S. I detailed Pte. Farrer, J. for fatigue duties. The first fatigue (carrying chairs) was completed. Next fatigue was carrying ammunition with L/Cpl. Cole in charge of the party. During this fatigue I called L/Cpl. Cole to detail his fatigue for a further duty. L/Cpl. Cole returned to his fatigue party and found the prisoner absent and the work completed. L/Cpl. Cole and I searched the area for the prisoner. He could not be found and I then reported this to C.S.M. Turner.

The accused declines to cross examine the witness.

C.5140 Cpl. Craddock, K.
Hast. & P.E.R.

2nd Charge
2nd witness

C4919 L/Cpl. Cole, G. Hastings & Prince Edward Reg.t having been duly sworn states:-
The statement made here by C5140 Cpl. Craddock, K. is correct.
The accused declines to cross examine the witness.

C4919 L/Cpl. Cole, G.
Hast. & P.E.R. Regt.

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

Certified that Rule of procedure 4 (C)(D)(E)(F) and (G) have been complied with.

Taken down by me in the presence of and hearing of the accused this 4th. day of June 1942.

A.C. Holland

(A.C.Holland) Capt.,
Adjutant,
The Hastings & Prince Edward Regiment.
C.A.(A.F.)

Documentary Evidence

F78694 L/Cpl. GALLANT C.R. having been duly sworn states:

I F78694 L/Cpl. GALLANT C.R.

was Guard Commander G.H.Q. No. 1 Wolf Battalion

on 20th MAY 42

when C 6066 PTE FARRER J.

reported to me at 2145 hrs. 20/5/42

(signed) Lcpl. Gallant C.R.

W.N.S.R. #1. C.D.L.R.U.

GSM

CERTIFIED TRUE COPY

Documentary Evidence

F78694 L/Cpl. Gallant, C.R. having been

duly sworn states:

I F78694 L/Cpl. Gallant, C.R.

as Guard Commander Bn. H.Q. No. 1 Wolf Battalion

on 20 May 42

when C6066 Lte. Farrer, J.

reported to me at 2145 hrs. 20 May 42.

(Signed) L/Cpl. Gallant, C.R.

A.C. Holland Capt. ADJUTANT,

THE HASTINGS & PRINCE EDWARD REGT. C.A.R.F.

J.A.G.S.E...I.C.D.I.E.U.

CRIME

No 1 Wolf Battalion (H.R.E.)

SQUADRON, BATTERY OR COMPANY

CHARGE against No. C6066 Pte Farrer J.

Place	Date of Offence	OFFENCE	Name of Witness	Punishment Awarded	By whom Awarded
Field		W.O.A.S.- A.W.L. in that he did absent himself without leave from 2300 hrs 1-5-42 till 2145 hrs 20-5-42 Sec. 15 (1) A.A.	Doc. Cpl Thurston	Remand Co	D.S.

Released from arrest without prejudice to rearrest on return of unit.

Service years

Number of good conduct badges

Date of last entry in company conduct book

Character

Date of last entry for an act of drunkenness

Number of cases of drunkenness within the last twelve months

D. Fletcher Major

Commanding

M. F. B. 264

600m—6-4 (872-3)
H.Q. 1772-25-99

CRIME

D Coy Hasl a P & Reg't

SQUADRON, BATTERY OR COMPANY

CHARGE against No. C6066 Farrer J J

Place	Date of Offence	OFFENCE	Name of Witness	Punishment Awarded	By whom Awarded
Field	3.6.42	W.O.A.S. in that he at 1800 hrs on the 3.6.42 broke out of barracks when his duty required him to be in barracks A.A. sec 10 (4)	Cpl Craddock L/Cpl Cole	Remanded to F.G.C.M.	RC

Service years

Number of good conduct badges

Date of last entry in company conduct book

Character

Date of last entry for an act of drunkenness

Number of cases of drunkenness within the last twelve months

Commanding

M. F. B. 264

900m—6-4 (873-3)
H.Q. 1772-35-69

Wt. 10877/1511 1,500,000 6/40. E.W. & Co. 51-9982

REGIMENTAL CONDUCT SHEET.

Army Form B 120.

Army Number [redacted]6056
Surname [redacted]arrer
Christian Names J.J.
Attested 30 May 19 40

Corps Hastings & Prince Edward Regiment

Number of sheets (in words) One

Signature of C.O. or Adjutant

Place	Date of Offence	Rank	Casts of Distinctive pers	Offence	Names of Witnesses	Punishment awarded	Date of award, or of order dispensing with trial	By whom	Remarks
Bordon	1/7/40	Pte.		A.W.L. from 0200 hrs. 1/7/40 until 1800 hrs. 3/7/40	Cpl. Moss	5 days C.B.	4/7 40	G.Wallace Capt.	Forfiets 3 days pay under F.R.&I.
"	24/8/40	Pte		A.W.L. from 1745 hrs. 24/8/40 until 0615 hrs. 26/8/40	Cpl.Graham	5 days C.B.	28/8 40	J.E.McKibbon Lieut.	2 days pay under F.R.&I.
"	27/8/40	"		A.W.L. from 0615 hrs. 27/8/40 until 1015 hrs. 30/8/40	Cpl. Thompson	48 hrs. Detn.	31/8/40	Col. Campbell	12 days pay under F.R.& I.
"	3/9/40	"		A.W.L. from 0745 hrs. 3/9/40 until 2200 hrs. 4/9/40	L/Cpl. Spence	168 hrs. Detn.	5/9/ 40	Col. Campbell	23 days pay under F.R.&I.
"	9/10/40	"		Conduct to the prejudice of good order & military discipline was late for parade	Sjt. Bayly	10 days C.B.	10/10 40	Col. Campbell	
"	11/10/40	"		Failing to appear at a place of parade appointed by his C.O. at 0600 hrs.	Documentary	72 hrs. Detn	21/10 40	Col. Campbell	
"	15/2/41	"		A.W.L. from 1530 hrs. 16/2/41 until 0730 hrs. 24/2/41	Cpl. Alexander	7 days C.B.	24/2/ 41	J.M. Heyoraft Lieut.	Forfiets 8 days pay under F.R.&I.

To be carried over

Place	Date of Offence	Rank	Corps of Unit concerned	Offence	Names of Witnesses	Punishment awarded	Date of award, or of order dispensing with trial	By whom	Remarks
Bordon	17/3/41	Pte.		A.W.L. from 0615 hrs. 17/3/41 until 1405 Hrs. 19/3/41	Cpl. Holmes	5 days C.B.	20/3 41	Maj. Dyas	3 days pay under F.R. & I.
"	16/4/ 41	"		A.W.L. from 0200 hrs. 16/4/41 until 2115 hrs. 28/4/41	Cpl. Holmes	14 days Detn.	10/5 41	Maj. Kearns	13 days pay under F.R. & I.
"	25/5/41	"		A.W.L. from 0800 hrs. 24 May 41 until 1400 hrs. 25 May 41	Cpl. Hamlyn	7 days C.B.	28/5 41	Capt. Heyoraft	2 days pay under F.R. & I.
"	2/6/41	"		A.W.L. while a defaulter from 2200 hrs. 2 Jun 41 until 2310 hrs. 4 Jun 41.	Cpl. Davies	7 days C.B.	5/6 41	Capt. Heyoraft	3 days Pay under F.R. & I.
In the field	23/4/42	Pte.		W.O.A.S. A.W.L. from 2300 hrs. 23/4/42 to 1315 hrs. 24/4/41.	Cpl. Thurston	Reprimand	25/4 42	A.A. Kennedy, Maj.	1 days pay F.R. & I.

J.C. Holland Capt. ADJUTANT,
THE HASTINGS & PRINCE EDWARD REGT. C.A.S.F.
certified true copy

ARMY FORM B.295.

Statement as to Character and Particulars of Service of Accused.

Number.	*Rank.*	*Name.*	*Regiment (or as the case may be).*
68066	Pte.	Farrer, J	Hast. & P.S.Regt.

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

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

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

† See para. 677, K.R., 1940.

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

		*Within last 12 months	*Since Enlistment.
For	A.W.L.	Two times	eleven times.
For	an offence under Sec 40	No times	one times.
For		times	times.
For		times	times.
For		times	times.

Number of instances of gallantry or distinguished conduct. None

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

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

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

~~Particulars of convictions of the accused by a court martial or a civil court, summary awards under section 47 of the Army Act, and dispensations with trial under section 78 of the Army Act, are set out in the schedule annexed to this statement.~~

3. ~~The accused is not under sentence at the present time, or~~ The accused ~~at the present time is under sentence to~~ ~~imprisonment~~ ~~beginning on the~~ ~~day of~~

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

5. The present age of the accused according to his ~~Attestation paper~~ record of service is 22 yrs. 4 months 5 days

6. The date of ~~his enlistment~~ his attestation specified in his ~~Attestation paper~~ record of service is 30 May 40

7. The service which the accused is allowed to reckon towards discharge or transfer to the reserve is 2 yrs 5 days

8. The accused is entitled to deferred pay or gratuity in respect of 2 yrs. 5 days service.

9. The accused is entitled to reckon 2 yrs. 5 days service for the purpose of determining his pension, etc.

10. The accused is in possession of, or entitled to, no military decoration or military award (*or is in possession of or entitled to (state any military decoration or reward)*).

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

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

[illegible] Wt.[illegible] 75,000 12/40 A.& E.W.[illegible] (Sp.)[illegible]

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

No. ..... Rank ..... Name ..... of ..... Regiment (or as the case may be).

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

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

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

Signed this 9 day of June '42

A C Holland Capt. ADJUTANT,
THE HASTINGS & PRINCE EDWARD REGT. C.A.S.F.

13. The accused has served as a non-commissioned officer continuously, without reduction, to the present time.

Date of Promotion.

In the rank of ..... years.

In the rank of ..... years.

In the rank of ..... years.

(INSTRUCTION.—*If any matter in one of the above paragraphs cannot be stated from the regimental books the paragraph must be struck out, and the fact that in the case of a trial by field general court martial the information may be obtained from such sources as are available and the paragraph amended accordingly.*)

H.Q.C. 55-F-850 CONFIDENTIAL

DEPARTMENT OF NATIONAL DEFENCE—OTTAWA, CANADA

SUBJECT

FIELD GENERAL COURT-MARTIAL

FARMER, JEAN H.19158 CPL.

CENTRAL REGISTRY	DATE	P.A. OR D.F.	INITIALS	REFERRED TO	FOR	INITIALS	DATE
				(If names for which returned cannot be expressed on one line, enter here "With Minute".)			4-9-46

CONFIDENTIAL
H.Q.C. 55-F-850

OVERSEAS COMBINED

NOTICE

H-19158 Cpl. Farmer, J.
2 C.D.I.R.U.

161

Correspondence to be PINNED here.

Army Form A.3.

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

PROCEEDINGS.

A.

Order convening the Court.

On Active Service, this 8th day of May, 1942.

Whereas it appears to me, the undersigned, an officer in Command of CANADIAN REINFORCEMENT UNITS, CDN ARMY, OVERSEAS., on active service, that the persons named in the annexed Schedule, being subject to Military Law, have committed the offences in the said Schedule mentioned.

And whereas I am of opinion that it is not practicable that such offences should be tried by an ordinary General Court Martial; *[illegible]

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

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

* Omit if not applicable.

*[illegible]:—

*(1. [illegible])

*(2. [illegible])

*(3. [illegible])

[illegible]—]

PROCEEDINGS REVIEWED.

[illegible]
REVIEWING OFFICER (JAG) CMHQ
9 June 42.

President.

Rank.	Name.	Regiment.
Major	D. Fletcher, V.D.	1 Cdn Div Inf Reinf Unit

Members.

Rank.	Name.	Regiment.
Captain	R.S.E. Waterman	1 Cdn Div Inf Reinf Unit
Lieutenant	H.C. Arrell	2 Cdn Div Inf Reinf Unit
Lieutenant	L.A. Hudon	3 Cdn Div Inf Reinf Unit

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

*Signed [illegible] Brigadier

Commanding Cdn Reinforcement Units.
Convening Officer.

SCHEDULE.

Number, Rank (a), Name and Unit of Accused (b)	Offence charged	*Plea	Finding, and if Convicted, Sentence (c)	How dealt with by Confirming Officer (d)
H-19158 CPL. FARMER, J. Q.O.C.H. 2 Cdn Div Inf Reinf Unit.	First Charge A.A. sec 40	not guilty	guilty	I confirm finding on charges 1, 3 + 4 only and remit the sentence to 30 days detention D.S.
	Second Charge A.A. sec 40	not guilty	guilty	
	Third charge A.A. sec 40	not guilty	guilty	
	Fourth Charge A.A. sec 40	not guilty	guilty	
	See charge sheet attached.		reduced 6 ranks and to undergo 60 days detention. 12/May/42 D Fletcher Maj	

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

(Signed) H.W. Foulkes Brigadier (Signed) D Fletcher Maj
Commanding Cdn Reinforcement Units. No 1 C.D.I.R.U. President.
Convening Officer (c)

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

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

B. Certificate of President as to proceedings.

I certify that the above Court assembled on the 12th day of May 1942, and duly tried the persons named in the Schedule, and that the plea, finding, and sentence in the case of each such person were as stated in the third and fourth columns of that Schedule.

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

were duly sworn.

* Omit if not applicable.

Signed this 12 day of May 1942

D Fletcher Maj
President of the Court Martial.

C. Certificate in case of death sentences.

* See footnote (b) on page 702 M.M.L. 1929.

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

Signed this day of 19

President of the Court Martial.

D. Confirmation.

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

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

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

Signed this 20 day of May 1942

Crosby Steward Bourgeoins
Confirming Officer.
Comdr. C.N.S. D.A.A. & Q.M.G. 1st Can. Corps

Promulgated and extracts taken in the case of H19158. Cpl Farmer J.

(a) (Dated) 23 May 1942. (Signed) W Bowsher Maj
Le-Col.
C.O. 6 Base Wing
2 C.D.I.R.U.

Promulgated and extracts taken in the case of

(Dated) (Signed)

Promulgated and extracts taken in the case of

(Dated) (Signed)

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

24779 Wt. 40242—961 500m 8/40 P.Q. G. 600

B 2

CHARGE SHEET

The accused No.H19158 Corporal Jean Farmer, of the Queen's Own Cameron Highlanders of Canada Company, 6th Training Wing, No. 2 Canadian Division Infantry Reinforcement Unit, a soldier of the Canadian Army (Overseas) is charged with:

1st CHARGE — When on Active Service, CONDUCT TO THE PREJUDICE OF GOOD ORDER AND MILITARY DISCIPLINE,

SECT 40 ARMY ACT

in that he,

did improperly use Canadian Army Vehicles between 17th and 26th March, 1942, in connection with a dance held by Cranleigh Warship Week Committee on the 20th March 1942.

2nd CHARGE — When on Active Service, CONDUCT TO THE PREJUDICE OF GOOD ORDER AND MILITARY DISCIPLINE,

SECT 40 ARMY ACT

in that he,

Between the 17th and 19th incl. days of March 1942, improperly used his position as purchaser for the Sgt's. Mess No. 2 C.D.I.R.U. to obtain liquor and beer for the Cranleigh Warship Week Committee Dance held at Cranleigh on the 20th March 1942.

3rd CHARGE — When on Active Service, CONDUCT TO THE PREJUDICE OF GOOD ORDER AND MILITARY DISCIPLINE,

SECT 40 ARMY ACT

in that he,

On March 20th,1942, at Cranleigh, Surrey assisted in the illegal operation of a bar for the sale of liquor and beer at a dance held at Cranleigh, Surrey held by the Cranleigh Warship Week Committee.

4th CHARGE — When on Active Service, CONDUCT TO THE PREJUDICE OF GOOD ORDER AND MILITARY DISCIPLINE,

SECT 40 ARMY ACT

in that he,

On the 27th March, 1942 made a false statement to Capt. P.B. Creasy D.A.P.M., C.R.U. in connection with the purchase of liquor for the Cranleigh Warship Week Committee's dance at Cranleigh, Surrey on the 20th March 1942,in that he stated,

CHARGE SHEET
Corporal No. H-19158 , Jean Farmer
Page No. 2.

" I did not buy the liquor nor did receive any money to buy it with. I have not been paid for the beer yet".

.....Lt.Col.
(D.L. Redman, V.D.
O.C. 6th Training Wing
No. 2. C.D.I.R.U.)

Jasper Camp
27th April 1942.

To be tried by Field General Court Martial

(F.R. Phelan)Brigadier
Commanding Cdn Reinforcement Units.
Convening Officer

Farnborough, Hants
This 6th day of May 42.

No. H-19158, CPL FARMER J., No 2 C.D.I.R.U., tried by Field General Court Martial at WITLEY, Surrey on 12 May 42.

PRESIDENT:	Major D. Fletcher, V.D.	1 CDIRU.
MEMBERS:	Capt. R.S.E. Waterman,	1 CDIRU.
	Lieut. H.C. Arrell,	2 CDIRU.
	Lieut. L.A. Hudon,	2 CDIRU.

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

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

The accused is brought before the Court.

Prosecutor:-	Lieut. G.M. Morrison,	HQ, C.R.U.
Defending Officer:	Lieut. D.E. Lewis,	1 CASCRU.

At 1330 hours the trial commences.

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

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

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

The President and members are duly sworn.

The officers under instruction are duly sworn.

Q2. Do you object to No B-66944, Sgt. T. Pyburn, H.Q., C.R.U., acting as shorthand writer?
A2. No, sir.

The shorthand writer is duly sworn.

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

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

Q3. Are you guilty or not guilty of the first charge against you, which you have heard read?
A3. Not Guilty.
Q4. Are you guilty or not guilty of the second charge against you, which you have heard read?
A4. Not Guilty.
Q5. Are you guilty or not guilty of the third charge against you, which you have heard read?
A5. Not Guilty.
Q6. Are you guilty or not guilty of the fourth charge against you, which you have heard read?
A6. Not Guilty.

Q7. Do you wish to apply for an adjournment on the ground that any of the rules relating to procedure before trial have not been complied with, and that you have been prejudiced thereby, or on the ground that you have not had sufficient opportunity for preparing your defence?
A7. No, sir.

1st witness) for) prosecution) MISS MARGARET ELIZABETH ENGLISH, Cranleigh, Surrey, being duly sworn, is examined by the prosecutor:-

The witness identifies herself.

Q8. This village of Cranleigh is about what distance from here?
A8. About 12 miles.
Q9. You had something to do with the Warship Week Committee there?
A9. Yes, I did.
Q10. In what capacity?
A10. I was chairman of the entertainment committee and a member of the executive committee.
Q11. When was the Warship Week?
A11. From 14 to 21 Mar 42.
Q12. Was there a dance held in connection with the committee's proceedings?
A12. Yes.
Q13. When was that?
A13. One dance was held the first Sat, one on the Fri, and one on the following Sat.
Q14. Do you recognise the accused, Cpl Farmer?
A14. Yes, I do.
Q15. Did he have anything to do with any of those dances?
A15. On the Fri night, 20 Mar.
Q16. In giving your evidence, as you know there are several charges against Cpl Farmer, in giving your evidence kindly confine yourself to any dealings or conversations you had with Cpl Farmer and not anything that was said in his absence which would be in the nature of hearsay. Tell the court what conversation you had with Cpl Farmer with reference to this dance held on 20 Mar last, beginning with the first time you had any conversation with him about a dance?
A16. The first time I saw him was about three wks before the dance, when I saw him outside the Sgts Mess at Camp 103, Jasper Camp, Witley.
Q17. You had gone to see him as a result of a conversation you had with Lt Gagnon, I believe?
A17. Yes.
Q18. What was the conversation you had with the accused?
A18. I asked him if he thought he could run a bar for us at this dance and he said he thought it would be possible to do so, but first of all I was to find out from the police in Cranleigh if it would be all right for the dance to operate, if it would be necessary to have a license and if it would be all right to run the bar at the dance, and I said I would see the police, and he said if it was all right with the police he could run the bar for me. I next saw him in Guildford outside "The Lion" on Thu, the 19th, and then after I had seen him then and paid him the money he brought the liquor out to Cranleigh.
Q19. Between those dates, three wks before the dance and the date you saw him in Guildford, which was 19 Mar, did you have any conversation with him in the meantime?
A19. I was to meet him on the Wed, but I arrived late and I didn't see him until the Thu before.
Q20. In other words, most of your arrangements were done through Lt Gagnon, he was the intermediary, so to speak, between yourself and Cpl Farmer; is that correct?
A20. Yes.
Q21. What did take place in Guildford on the 19th?
A21. I met Farmer and he said he had all the stuff ready for me, and when I paid him the money he followed my car and drove out to where I am staying at "The Holly," which is about two miles out of Cranleigh, and he followed me there.
Q22. Was he in a vehicle?
A22. Yes.
Q23. What sort of a vehicle?
A23. A lorry.
Q24. Was it a civilian or an army vehicle?
A24. A military one.
Q25. Was he driving it?
A25. No.
Q26. What did he do when he got to this place called "The Holly?"
A26. Just unloaded the stuff and then went away again.

Q27. What did "the stuff" consist of?
A27. I think 12 cases of beer, a dozen bottles of whisky, a dozen half-bottles of gin, and a dozen bottles of rum.
Q28. When did you next see the accused regarding the dance?
A28. When he arrived on the Fri evening, the 20th, to start the bar, when he arrived at my parent's home; my sister and friend had driven out to fetch him and he arrived at my own house.
Q29. Did you have some conversation with him there?
A29. Yes, I asked why they were late because they were nearly an hour late, and I was told they had an accident on the way, and after that we went down in my car to the other house where I was staying, myself and Cpl Farmer went, and I drove the car and he brought the stuff up to the dance, and the bar was ready to operate.
Q30. Who was i/c of the bar?
A30. Sgt Farmer, as he was then, and Hudson.
Q31. What were they actually doing at this bar? What was Sgt Farmer doing?
A31. Just serving the drinks.
Q32. Were you there when something happened regarding the closing of the bar?
A32. Yes.
Q33. What happened?
A33. The first I saw, the civilian police had arrived.
Q34. From your own knowledge, what did you see?
A34. I was in the dance hall, and directly I heard they had arrived I went to the bar. The Police Sgt was not having anything to say; I didn't hear him say anything to Farmer about it at all, and I went and asked him what had happened and he said a civilian had been served with a drink.
Q35. That was not in Cpl Farmer's presence, was it?
A35. No.

PROSECUTOR: The officer will be giving evidence himself about that.

THE COURT: I think I would let her tell the story.

PROSECUTOR: It was merely in fairness to the accused, sir. I did not want any hearsay evidence.

DEFENCE: I will have to object if any hearsay is brought in.

PROSECUTOR: I have been trying to avoid any conversation she had with anyone in the absence of the accused, because we will produce witnesses who can tell just what did happen at the bar, and Lt Gagnon will be called to give evidence as to his part in the arrangements, which will connect it up, I think.

Q36. What happened eventually at the bar?
A36. If you don't wish me to say anything that happened when Farmer was not there, he was not there during any of the conversations.
Q37. Was the bar closed, do you know?
A37. Not by the police, no; the bar was closed by Major Worsick; he is a Cameron Highlander at Witley Camp.
Q38. Did you have any conversation with the accused after the bar was closed?
A38. No. He probably heard me ask Major Worsick why it was necessary to close it because I had the police permission to have the bar. I didn't talk to Farmer then at all, though.
Q39. You had the permission of the police to operate the bar?
A39. Yes.
Q40. Whose permission did you have?
A40. He was a Sgt who was at Cranleigh then.
Q41. Let me put it this way: Have you recognised this Police Sgt in this vicinity, this Sgt of the Police?
A41. Yes.
Q42. You had his permission to operate a bar?
A42. Yes, to operate a bar serving military people only; not serving civilians, though.
Q43. You don't know whether he had any authority to give you such permission or not, do you?
A43. Well, as he was the sergeant man of the police force in Cranleigh ---
Q44. Did you tell the accused that you had that permission?
A44. Yes.
Q45. Just what did you say to him?

A45. I said I had seen the police Sgt and that I had told him we had a bar the year before and he said, "You know you can't serve civilians," and I said, "I know that, we didn't the year before," and he said, "Provided you serve only military people it will be all right."
Q46. When did you tell that to Farmer?
A46. I think we started the bar operating and I said, "Don't serve a civilian at all," because I knew there might possibly be some discussion if they were served.
Q47. Do you know if he did serve civilians?
A47. To the best of my knowledge he didn't; I didn't see him.
Q48. How much money, if any, did you give the accused in order to purchase supplies for the dance?
A48. £63.
Q49. What happened when the bar was closed, or after?
A49. All the remaining stuff was taken to "The Hollies;" I don't know who took it but it was there when I arrived.
Q50. What was done with it after that?
A50. It was put into the garage.
Q51. What happened to it subsequently?
A51. It stayed there until the following Wed. I think the empty crates went on the Wed and the remaining drink went on the Thu following the dance.
Q52. Who took it away, do you know?
A52. Cpl Farmer took the crates away on the Wed, but I didn't see the drinks go.
Q53. Was he there on the Thu following the dance?
A53. I heard he was there, but I didn't see him.
Q54. Now then, Miss English, did you have any conversation with the accused after the bar was closed the night of the dance?
A54. Yes.
Q55. Where?
A55. At "The Hollies."
Q56. What was the nature of that conversation?
A56. We were just settling up the money.
Q57. What was actually done?
A57. Cpl Farmer gave me the money he had taken at the bar, and then I paid him for running the bar for me, and also Hudson.
Q58. How much did you pay the accused?
A58. £7.
Q59. And Hudson?
A59. £2.
Q60. Well now, how much money was taken in at the bar that night, do you know?
A60. I think £45.

CROSS EXAMINED BY THE DEFENDING OFFICER

Q61. There are one or two points I would like to clear up. In the first place, being the chairman of the Warships Week Committee, it was up to you to look after the whole dance, was it or not?
A61. The whole committee ran the dance; I made quite a lot of arrangements myself but it was the responsibility of the whole committee really.
Q62. Was it your job to look after the bar?
A62. Well, a committee does not ask its chairman to do something. The committee suggested there should be a bar, and I happen to have a friend who was the Secy, and we had run a dance the year before and knew what to do.
Q63. Do you know Lt Gagnon?
A63. I do.
Q64. Do you know him quite well?
A64. Yes, I do.
Q65. You have been more or less friendly with him for some considerable time, you have been in the mess with him, and so on?
A65. Yes.
Q66. You are a good friend of his?
A66. Yes.
Q67. And you conferred with him with refence to this dance, is that correct?
A67. Yes.
Q68. You talked it over with him, did you?
A68. Yes, I discussed the whole matter with him.
Q69. Could you give us some idea of what happened when you went to the police station, as to what you asked the Sgt or what he said to you?

A69. I saw the Sgt just outside the P.O. I had been to the police station two or three times before and was not successful in seeing him in the police station, and seeing him in the village this day I went up to him and asked if I could speak to him for a minute, and I asked him if it would be all right to run another bar if it was a military bar, because previously I had asked the local licensee to run the bar, but owing to the shortage of stock they could not do it.

Q70. You did not consult a barrister or solicitor as to whether or not that was the correct procedure; you simply asked the Police Sgt if you needed a license, did you?

A70. I did not ask the police if I had to have a civilian license to run a civilian bar, because I knew perfectly well I did.

Q71. And they told you you could not get an occasional license, therefore you tried to get a military one, did you?

A71. They would not run a bar because they hadn't the stock to do it, so I decided we would have a military bar, the same as the year before.

Q72. You operated a bar the year before, did you?

A72. We had one the year before and the Police Sgt said it was legal if we could have a military bar, provided we did not serve civilians.

Q73. The night of this dance, did you tell Cpl Farmer you had a license?

A73. No, a license was not necessary.

Q74. Did you make a statement to this effect, "You have nothing to worry about, we have it all fixed?"

A74. Yes, as far as the license was concerned.

Q75. And therefore he could assume he had nothing to worry about?

A75. Yes.

Q76. Did you make a statement as to his position with civilians?

A76. Yes, I said we could not serve civilians.

Q77. You mentioned that to him, did you?

A77. Yes, positively, and it was announced from the stage, that civilians could not be served.

Q78. Was that announcement made in the presence of the accused?

A78. No, he wasn't in that place, but the civilians themselves knew they could not buy drinks.

Q79. If we brought witnesses to show that you simply said, "Everything is fixed, we have the license," would such a witness be perjuring himself?

A79. Absolutely.

Q80. Such a witness, absolutely not interested in the case, as far as you are concerned would be making a false statement?

A80. If he says that I said we had a license, yes, because a license was not necessary; I had been told that by the Sgt.

Q81. Did you say you had a license and there was nothing to worry about?

A81. No, I didn't say that, because I knew very well we did not have a license.

Q82. Your exact words were to the effect you had a license?

A82. I never said I had a license; I said I had permission to run a bar, which is very different to holding a license.

Q83. Did you meet Farmer through anybody, or were arrangements made for you to meet him at Guildford?

A83. I saw him first of all the Sat after Xmas Day.

Q84. So you knew him before this occasion, did you?

A84. Yes - very slightly, but I knew him.

Q85. You knew what his position was in the Sgts Mess?

A85. Yes.

Q86. You made the statement that the police did not close the bar. Do you know if they said anything about the sale of liquor at this time when they came in during the evening of the dance?

A86. He said a civilian had been served and I immed asked him who, and he told me it was my own father. I know it is perhaps not evidence, but I know it was not drink he was buying himself.

Q87. Did the police tell you to close the bar up or not?

A87. No, they just told me that, and then he said he wished to speak to Major Worsick about it; he didn't want to talk to me about it at all.

Q88. After this event occurred and you knew the M.P. were taking it up and possibly laying charges, did you make any statement in the presence of Cpl Farmer, or did you speak to him at all?

A88. No.

Q89. You have not seen him since until this day?

A89. I have seen him, but not spoken to him. Oh yes, I forget. I did see him when he came with Sgt Shaw and paid me the balance of the money.

Q90. What did he say at that time?
A90. I don't remember.
Q91. Did you make any statement to the effect he should keep quiet about the whole affair and you would see it was fixed up, or anything like that?
A91. I don't remember that.
Q92. But you could have said that?
A92. It doesn't sound like a remark I would make. I might have said it was the concern of the committee because it was the concern of the committee, that is the executive committee; I felt it was the responsibility of the committee, especially as the police had told us that it was legal to have it.
Q93. You thought it was up to you to help him out if you could?
A93. Yes.

2nd witness for prosecution) LIEUT. J.J.D. GAGNON, 6 Tg Wing, No 2 C.D.I.R.U., being duly sworn, is examined by the prosecutor:-

The witness identifies himself.

Q94. Do you know the accused, Cpl Farmer?
A94. I do.
Q95. Have you known him for some time?
A95. I have.
Q96. Did you know him before coming into the army?
A96. Before mobilization, yes.
Q97. Did you both live in the same place?
A97. Well, not exactly; in the same community, I will say.
Q98. In what capacity was he serving in the army on 20 Mar last?
A98. He was an A/Sgt while carrying out duties as buyer for the Sgts Mess; he was in the Admin Wing, he was not a coy man, the Admin Wing of No 2 CDIRU; it is the same unit but not the same coy as mine.
Q99. Had he been acting in the capacity of purchaser for the Sgts Mess for some time previously?
A99. That I don't know, I couldn't say definitely, he had been for some time but I could not say for sure.
Q100. Would it be a matter of weeks, anyway?
A100. Yes, I would venture to say a matter of months anyway.
Q101. Did you have any conversation with him at any time about a dance at the Cranleigh town hall?
A101. No.
Q102. I mean prior to the time of the dance. Do you know whether there was a dance at the Cranleigh town hall?
A102. There was a dance in the village hall for Warships Week.
Q103. Well, to be technical, that is what I mean?
A103. Yes.
Q104. Did you have any conversation with him about that?
A104. I did.
Q105. When?
A105. About two weeks before the dance, roughly.
Q106. Where was that conversation with him?
A106. It might have been in the coy office, but it was in the camp area.
Q107. What was the effect of it?
A107. I asked him if he was able to run a bar at this dance and get stock for the bar at the dance.
Q108. You did that as a result of a conversation you had with Miss English?
A108. As president of the committee, that is correct.
Q109. What did he reply to your request?
A109. I cannot repeat it word for word, but the gist of it was to theeffect that if there was not a dance or any special function going on in the Sgts Mess of No 2 CDIRU, he would be glad to help and see what he could do regarding purchasing liquor for the bar.
Q110. Did you see him after that about his arrangements for the dance?
A110. Not until I conveyed the information to Miss English, who in turn had assured me she had seen the local police.
Q111. What further conversation, if any, did you have with Cpl Farmer after this conversation you have related?
A111. Only, as I said, having spoken to Miss English I conveyed the information to him to the effect where he should meet her, that is all.
Q112. To make the necessary arrangements?
A112. That is right.

Q113. You told him to meet her where?
A113. On one occasion at the Snack Bar in Guildford, and apparently they did not meet that day, and the next day they were to meet in Guildford in front of "The Lion" Hotel.
Q114. Did you and Miss English and the accused ever have any discussion together, the three of you, in regard to this dance?
A114. No.
Q115. All that you know is that you gave him this information and told him to meet Miss English. What is the next you know about Cpl Farmer's actions with regard to these arrangements for the dance?
A115. On the night of the dance he was working behind the bar, that was the night of 20 Mar, and after the bar had been closed he turned in his cash to Miss English, the night of the 20th, and then picked up the empties and the liquor that was left over.
Q116. Do you know whether or not there was any sanction obtained, I mean to yourown knowledge, any sanction obtained for the operation of the bar at the Cranleigh village hall?
A116. Only the permission granted through the civil police and I didn't have any contact with them; I don't know anything of that to my own personal knowledge.
Q117. Were there many people at this dance?
A117. Yes, the hall was quite crowded for its size, I would say 300 or 400 people possibly - military and civilians mixed.
Q118. You were on trial yourself before a General Court Martial over this whole affair?
A118. Correct.
Q119. Has your sentence been promulgated?
A119. No, not yet.

CROSS EXAMINED BY THE DEFENDING OFFICER

Q120. What was Farmer's job exactly with the Sgts Mess, do you know?
A120. As regards his exact duties I couldn't say. As a coy officer all I was interested in was what showed through orders, and through daily orders he was shown as made A/SGT while in the capacity of purchaser for the Sgts Mess, No 2 CDIHU.
Q121. Do you know what the duties of a purchaser are exactly?
A121. No, I don't.
Q122. You knew Farmer quite well? You had conversations with him quite often?
A122. Since mobilization, I wouldn't say how often though.
Q123. You had an idea he went around the country buying or purchasing?
A123. I knew he did the purchasing for the mess.
Q124. He made numerous inquiries at different places for various articles which might be required in the Sgts Mess?
A124. I don't know; I wasn't with him.
Q125. How did you expect him to get the stuff he was getting for Miss English?
A125. Well, I don't know.
Q126. You knew he had a truck every day?
A126. No, I didn't.
Q127. At any time did you suggest he might use a truck through his job in the Sgts Mess?
A127. Never.
Q128. What did Miss English say exactly as to the authority she had for a bar at this dance?
A128. Well, at the time before the dance I was not familiar with the law of the country as regards a bar at a dance, but she had explained to me that the year previous there had been a bar at the dance, a military bar set up by the R.A.S.C. and she had spoken to the police in the village and had recd their permission to operate a similar bar this year.
Q129. Did you convey that information to the accused?
A129. That is right.
Q130. Do you remember the words you used?
A130. No, this was two mos ago practically.
Q131. But he obtained the idea he could sell liquor -- that permission had been obtained?
A131. Yes, I did myself as a matter of fact.

Q132. Did you expect him to take his duties on because of his duties in the mess, or as an individual?
A132. As an individual. Knowing he had experience at that work I asked him if he would care to help the effort in that manner and he said he would be glad to if it did not interfere with his duties.
Q133. After the evening of the dance, a few days after did you have some conversation with him with reference to this occurrence, anything to the effect not to say too much and that you would do what you could to get him out of the scrape he was in?
A133. No, but a summary of evidence was taken in connection with charges against me, which have been dealt with, and I have not been in conversation with Cpl Farmer on any occasion since.
Q134. There is a suggestion you made a certain statement at Mrs Musgraves' house after thedance for him not to say too much; did you say that to Farmer?
A134. Say too much to whom?
Q135. To anybody who might ask the question?
A135. Never; there was no question of any investigation at the time.
Q136. Knowing the police had been there and made inquiries, did you anticipate anything might come of it?
A136. No, because it has since come to my attention a sr officer at that dance told the police he would go in and interview the police inspector at Godalming the next day.
Q137. It was his intention to go in and smooth things over, as it were?
A137. That is right.

RE EXAMINED BY THE PROSECUTOR

Q138. Did you seek the permission of anyone at camp here, either the Pres of the Sgts Mess or any other mess, for the operation of this bar?
A138. I casually once spoke to the Pres of the Sgts Mess and told him that the RASC had catered to one of their dances in order that they might have a bar - this was before the dance - and asked him if their Sgts Mess would be willing to do this, and the reply was they would be only too glad, provided it did not break any rules.
Q139. Did you have any conversation with the accused about this permission or semi-permission you got from the Pres? Did you tell the accused about your conversation with the Pres?
A139. It strikes me I did mention it to the accused.
Q140. What did he say about that?
A140. I can't remember exactly what he said about that.
Q141. Did he look favourably upon it, do you recall?
A141. I believe he said something to the effect that if a permit was obtained or something of that sort, that the committee and himself would probably be better off by dealing directly instead of through the Mess - something to that effect.
Q142. What is that again?
A142. Having mentioned the casual conversation with the Pres of the Sgts Mess, he said something to the effect that both he and the committee would make more money if he made the deal directly with the committee, provided they had the necessary permit, rather than if the Sgts Mess itself handled the whole thing.

Q143. DEFENCE: Do you remember the name of the person whom you interviewed as Pres of the Sgts Mess?
A143. I do - Sgt-Maj A. Belfry.
Q144. You are sure he was the Pres at that time?
A144. Unless they changed the Pres a very few days previous to that time.
Q145. You are not absolutely positive, though?
A146. Well, I didn't ask him, "Are you the Pres of the Mess" if that is what you want.

(Page 9 follows)

3rd witness for prosecution) POLICE SGT. NO. 3 CHARLES HENRY MAYES, Leatherhead Div, Surrey County Constabulary, being duly sworn, is examined by the prosecutor:-

The witness identifies himself.

Q146. Do you recognise the accused here on your right?
A146. I do, yes sir.
Q147. Do you remember seeing him on 20 Mar last?
A147. I do.
Q148. Where was that?
A148. At the village hall, Cranleigh.
Q149. What was he doing there?
A149. Serving behind the wet bar.
Q150. Were you present at this dance yourself?
A150. I was standing in the doorway.
Q151. What did you see him do?
A151. He was serving drinks to civilians and military.
Q152. Did you take any action?
A152. I went and got Constable Bundy, whom I knew was at a certain place in the village. I took him back to the village hall, where we saw drinks being served to civilians and military.
Q153. Did you make any effort to prevent that?
A153. I told Const Bundy to take the names of the two civilians whom we had seen Cpl Farmer serve drinks to.
Q154. Was there any civilian authority for the operation of that bar for that dance, any civilian permission for anyone to operate a bar?
A154. That is what I went to inquire about. I should have been notified if there had been an occasional license granted and I had no such information.
Q155. What is an occasional license?

DEFENCE: I am objecting here; he is not in a position to give a statement or interpretation of the law. This man has not been shown to be an expert witness.

COURT: Objection upheld.

Q156. PROSECUTOR: Did you have any conversation with the accused?
A156. I asked for the officer i/c, and Cpl Farmer called for Major Worsick or Lt Gagnon; his words were, "Fetch Major Worsick or Lt Gagnon."
Q157. Was that done?
A157. I went amongst the people in the bar and assisted in getting the names of these civilians whom I had seen being served with drinks, and it was some time before Major Worsick came on the scene.
Q158. Had permission been sought from you for the operation of a bar there?
A158. Yes, Miss English approached me on 17 Mar, on the Tue previous to the dance.
Q159. Did you give her permission?
A159. Definitely not; I told her she would have to apply to the licensed victualler authorising drinks to be sold at this dance.
Q160. Did you have any conversation with the accused after the dance?
A160. No, I did not, I don't think we did; I was mostly concerned with Major Worsick.

CROSS EXAMINED BY DEFENDING OFFICER

Q161. What was the reason you happened to go to this dance?
A161. It was Warship Week and I knew several things were being held at the village hall, and it being Can pay night I thought I would take a walk to the village.
Q162. Did anybody tell you there might be something going on which might be against the rules?
A162. No sir, it is my duty to go around and see everything is being carried out in accordance with the law.
Q163. You saw them selling drinks to civilians as well as army personnel?
A163. I did.
Q164. How many civilians did you notice drinks being sold to?
A164. Anyone who went up to the bar was served. If I had gone and asked for a drink I would have got one just the same.

Q165. Could these civilians you saw have been with military personnel and have been served through military personnel?
A165. One particular gentleman I know was not with any military personnel.
Q166. What was he served with?
A166. Gin.
Q167. Are you positive; did you smell it?
A167. No, but I know it was gin.
Q168. Did you see it come out of a bottle of gin?
A168. I can't say what it came out of, but in my own mind I am quite satisfied.
Q169. Could it have been water or soda?
A169. The gentleman wouldn't have paid 10/6 for a bottle. I saw the money being passed over and I saw the drinks coming back.
Q170. But it might have been a soft drink of some sort?
A170. Definitely not.
Q171. You did not take it as evidence?
A171. No, I didn't take a sample of it; I was quite satisfied it was gin; it was gin and beer, and I didn't take any samples of it.

Q172. THE COURT: Did you know anything about permission being given this committee to operate a bar for military personnel only?
A172. Miss English asked me about this on the Tue night, and I said she could not have any drinks there unless she approached a licensee, who would have to apply for a license, and she said she had a friend in Witley who could supply the drink, and I said, "Why don't they bring their own drink?" and she didn't like that, so I said, "If the Cdn boys bring their own drinks they could only serve to Cdn boys; they can't serve to any outside person at all."

4th witness for prosecution) No K-92019, PTE. S.N. FERGUSON, Admin Wing, No 2 CDIRU, being duly sworn, is examined by the prosecutor:-

The witness identifies himself.

Q173. Do you recognise the accused, Cpl Farmer?
A173. Yes, sir.
Q174. I want you to recall if you drove the accused on 19 Mar last?
A174. Yes, sir.
Q175. Where did you go?
A175. From the central stores in Laurentide Camp, Sgts Mess, Witley, through Godalming to Guildford.
Q176. In what kind of a vehicle?
A176. In a 15-cwt.
Q177. Were you driving it?
A177. Yes, sir.
Q178. Was the accused with you?
A178. Yes, sir.
Q179. Where did you go in Guildford?
A179. To Friaries Brewery.
Q180. What happened there?
A180. After a short wait some cartons or boxes were wheeled out and put on the back of my truck.
Q181. Do you know what they were?
A181. Just cartons or boxes, that is all I know.
Q182. All right. From there where did you go?
A182. Through to Cranleigh.
Q183. What happened there?
A183. Everything was unloaded at a private home.
Q184. Did you unload it?
A184. No, sir.
Q185. Who did?
A185. The accused; he unloaded it from the back of the truck into a garage at the side of the house.
Q186. Now, from there where did you go?
A186. To Guildford for dinner, then through to Aldershot to the Pepsi-Cola place.
Q187. How long were you away altogether, do you remember?
A187. It was fairly late in the afternoon by the time we got back to camp.
Q188. What time did you leave Witley in the morning?
A188. Between eight and nine.

Q189. Did you and the accused have any conversation about what these supplies were for?
A189. I was under the impression it was for an officers' party.
Q190. Did he say anything to you to that effect?
A190. I don't know whether he stated anything definite, but that was the impression I had from the conversation.
Q191. Do you know Miss English of Cranleigh?
A191. Well, I recognise her, sir, but I don't know if I would recognise her any other place.
Q192. Do you remember seeing her that day, the 19 Mar?
A192. I remember seeing a young lady at the house, but I could not say now whether it was her or not.
Q193. Did you have a work ticket for this trip?
A193. Yes, sir.

PROSECUTOR: I may say, sir, the work ticket is in evidence for the other court martial; that is the reason I am not producing it here.

Q194. What officer signed it, if any?
A194. It was signed by the orderly office, I believe.
Q195. What did it say on it, do you remember?
A195. It is generally just a blanket request; it is generally filled in after the trip as far as the destination is concerned.
Q196. Had you on previous occasions driven the accused to Friaries Brewery, do you remember?
A196. I am not sure, I don't think so, but I may have done.
Q197. Did you make any trip with him on 20 Mar, the next day?
A197. No, sir.
Q198. Or any time later?
A198. I came off the road next day, sir; I have not been driving since.
Q199. Is that all you know about this affair?
A199. That is all I know, sir.
Q200. What would you say was in those cartons?
A200. I wouldn't say; I never saw what was in them.

CROSS EXAMINED BY THE DEFENDING OFFICER

Q201. How long have you been with the tpt sec?
A201. Since Sep 40.
Q202. Were you told on a number of occasions that the accused had the use of a truck from your sec?
A202. The Sgts Mess has been in the habit of having a truck once or twice a week. There is a requisition in for it probably the day before.
Q203. This work ticket you had was signed by an officer, was it?
A203. Yes, sir.
Q204. What would it say in a case like this?
A204. He just signs the work ticket authorising the journey.
Q205. Did it say where the truck was going?
A205. No.
Q206. It was a blanket coverage, you might say?
A206. Right. The only definite order I had on it was not to go beyond a 20-mile radius.
Q207. On this occasion you had a certain conversation with Farmer, no doubt, as you were riding along?
A207. Yes.
Q208. Did he tell you anything about his duties or job with reference to the Sgts Mess at that time?
A208. No, sir.
Q209. But you knew he had a right to go anywhere within this radius?
A209. Yes.
Q210. He might, for instance, go to a farm house and ask them to sell him something and perhaps not like it and go somewhere else, but that was his job, to go from spot to spot?
A210. That is right.
Q211. On this occasion referred to, did he talk to you at all about this party coming off?
A211. I believe he mentioned something about being back the next evening

Q212. Did he mention who would be there?
A212. I thought it was an officers' party, sir; that is the impression I had.
Q213. Did he tell you it was for the Warships Week?
A213. I don't know whether that was mentioned or not.
Q214. Do you remember whether or not you brought back something else that day, some purchase you had made?
A214. We picked up some cigs in Aldershot, and those were brought back to the Sgts Mess.
Q215. Do you remember whether he mentioned he was looking for other things?
A215. We were looking for other things, but cigs was all he could get.
Q216. Did he mention an officers' dance?
A216. Yes, I think so.
Q217. Then he got this stuff, and did you consider it was part of his duties?
A217. I didn't think of it.
Q218. Anything unusual in his actions this day? Anything he might not have done another day as part of his duties?
A218. I did not consider it unusual at the time, sir.

Q219. THE COURT: When this trip was authorised, did it state the purpose?
A219. Buying for the Sgts Mess, sir.

5th witness) CAPT. F.B. CREASY, D.A.P.M., HQ, C.R.U., being duly
for) sworn, is examined by the prosecutor:-
prosecution)

The witness identifies himself.

Q220. Did you carry out certain investigations regarding a dance held at Cranleigh village hall on 20 Mar last?
A220. Yes, I did.
Q221. Do you know the accused?
A221. Yes, Cpl Farmer.
Q222. You might give the result of your investigations as far as they are applicable to the accused?
A222. I have a statement made by the accused on 27 Mar 42 which ---

DEFENCE: Was this statement made at the time? The witness has a paper in his hand; what is it?

PROSECUTOR: I think Capt Creasy has a right to refresh his memory from notes made at the time.

Q223. These notes to which you are referring, when did you make them?
A223. They were made about three weeks ago.

DEFENCE: Before he can use them to refresh his memory it must be shown they were made right at the time.

Q224. PROSECUTOR: What is the statement you are referring to?
A224. A statement made to me by the accused on 27 Mar 42.
Q225. You have a written, signed statement?
A225. A written, signed statement made by him and at the time signed by him.
Q226. In your presence?
A226. Yes, he was warned before he made it that most likely there would be charges laid at a later date, and he was given the correct warning, and he made this statement to me. It is in my writing, and it was read over by the accused himself, and signed.

DEFENCE: We have had no notice of this, if it is to be submitted as an exhibit.

THE COURT: The def say they have had no time to prepare a rebuttal for this statement which is being introduced now - is that correct?

DEFENCE: There are a number of pages here, and on the summary there are only four lines, and there may be witnesses I may have to bring in rebuttal of this, because apparently at a later date another statement is being submitted and a contradictory point seems to arise between this and a later statement.

Q227. Have you any other statement from the accused?
A227. I took the second statement at a later date, on 2 Apr 42.
Q228. THE COURT: Do you propose to give those as evidence?
A228. There are certain points in it applicable to the charge.

PROSECUTOR: The def officer is quite correct. I notice on the summary the whole statement was not put in and the charge is for making the statement, "I did not buy the liquor nor did I receive any money to buy it with. I have not been paid for the beer yet." I think the statements should have actually been produced at the summary of evidence. I think I might possibly bring it out another way, since it was not produced on the summary.

DEFENCE: I object to any reference to it, sir, because they were not notes made on the spot.

Q229. PROSECUTOR: You might give the court the effect of the conversation you had with the accused on 27 Mar last, after warning him?
A229. He gave me quite a lengthy statement for me to summarize. The effect of it was --- (producing document).

DEFENCE: I am objecting to the witness looking at that statement.

THECOURT: Objection upheld.

PROSECUTOR: Please give your evidence verbally.

DEFENCE: May the statement be put away (witness replaces document in pocket).

THE COURT: The whole point is, the defence has not had time to see those statements which he should have done if we are going to use them.

Q230. PROSECUTOR: With particular reference to his remark that he did not buy the liquor?
A230. The accused admitted in his statmment to me that he had certain conversations with one Lieut Gagnon. During the conversation that went on he had got in touch with Miss English, and from conversations between himself and Lt Gagnon he was to go to Cranleigh and appear there as bartender, to run this bar for them at the Warships Week dance. He was called for at the camp here in a car and taken to Cranleigh on the night of 20 Mar, when he did act as bartender at this dance. He told me about how the police had stepped in and had closed the bar, andthat later the bar had been opened and re-closed again by the police. He denied at that time having had anything to do with the purchase of any liquors. He admitted he had bought a certain quantity of beer, I think it was three or four doz or something of that sort, and showed me a receipt for that amount that he had bought from this brewery in Guildford, and which he claimed he had not been paid for, and he very strenuously denied he had at any time bought any liquor for this dance or was connected in the purchase of it.
Q231. The charge reads that he said, "I did not buy the liquor nor did I receive any money to buy it with. I have not been paid for the beer yet."
A231. Those were his words, yes. At a later date, on 2 Apr 42, after further investigation, he was again warned both by myself and P.C. Wright of the Guildford Borough Police, who was present, and we had another conversation . He then admitted he had gone to Guildford just previous to the dance; that he had met Miss English there and got into her car just before the traffic lights on Main St; and that she had produced £13 and offered to pay him for the beer and he refused, explaining the police had stepped into the picture and he didn't wish to be tangled up with it by accepting money at that stage of the game. He also admitted he had got out of the car and had taken the beer he had in his truck at the time, which was a Govt truck used to supply the Sgts Messes, that he had taken that beer to Cranleigh and placed it in Miss English's garage; and he still denied having purchased any liquor for this dance; that Miss English had requested him, when he was in the car, to purchase further liquor for her, because she did not think she had enough, and that he had refused to do so.

Q232. Did you have any further conversation with him after th t?
A232. Yes, I think I had conversations on four or five occasions, but those were the two main occasions.

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Q233. What was your connection in this case? Why did you ask for this statement?
A233. I was investigating a complaint we had recd that a certain Sgt Farmer from No 2 CDIRU had offered for sale liquor at 25s. a bottle.
Q234. And that led into this other thing, did it?
A234. Yes, I went to Guildford on my investigation.
Q235. Were you under orders of the civilian police with reference to this case in hand?
A235. No, no, I was working in conjunction with the civilian police.
Q236. Does your jurisdiction go far enough to investigate any charge that might come up?
A236. Anything that might have something to do with military discipline, yes; I picked information up anyway, and investigated it.
Q237. All I am trying to do is prove to the court the scope of your jurisdiction. Now, the first time the accused made this statement, what were the circumstances of his giving you this written statement, the first one? Did you have him in your office on numerous occasions before?
A237. That was the first time. I started by questioning him.
Q238. Did a stenographer take down what was said?
A238. No, I took it down in longhand and he read it over and signed it.
Q239. Did he seem frightened at all?
A239. Not a bit; I don't think he is the type who would be frightened by questioning by any police officer.
Q240. Did you threaten him in any way?
A240. Absolutely not.
Q241. You did not insinuate he might get off lightly or anything?
A241. Absolutely not; I did not.
Q242. That was with reference to the first statement. Do you know Lieut. Gagnon, connected with this case?
A242. Yes, I questioned him at the same time.
Q243. Was any statement made with reference to anything he might have said to the accused?
A243. Lt Gagnon only made one statement to me, and refused to make any further statement.
Q244. Did he make any reference to Cpl Farmer or anything that might deal with the accused in this case?
A244. Yes, he stated he had had certain conversations with Farmer before and after the dance.
Q245. There was this event at the dance, where they closed this bar down. Had Gagnon spoken to the accused in this case after that dance, and did he make any reference to any conversation he might have had?
A245. Yes, regarding the disposal of certain quantities of liquor which was at that dance.
Q246. Any insinuation he might have suggested to the accused in this case not to talk, or something like that?
A246. There was no suggestion in my presence of anything of that sort.
Q247. Now the second statement we have; how long after the first was it made, do you remember the date?
A247. From 27 May to 2 Apr.
Q248. Was it voluntary or did you have to chase out and get Farmer?
A248. He was sent for and brought in.
Q249. Why?
A249. We wanted to further question him; his first statement was an absolute falsehood.
Q250. Before you got this statement from him, did he make any statement that he would give you what was the truth, or he would give you another statement if you would let him go, or anything to that effect?
A250. No, he didn't say anything to me about it.
Q251. Just think a moment, because it is quite important?
A251. I would not have paid any attention to it if he had said that.
Q252. Was that statement made?
A252. No.
Q253. After this statement was made, did he try to take it away or get it back, on the second occasion?

A253. He had some writing on a piece of paper, which I have not been able to make out in any sensible way on examination, and he handed that to me as a statement. He picked the statement up on one occasion, and I told him to give it back to me.
Q254. What were your exact words?
A254. I said, "Give me that statement back."
Q255. Didn't you say you would break his neck, or something of that sort?
A255. No, no, nothing like that.
Q256. Did you suggest the accused should leave the service or anything like that? Did you say it looked bad for him? After he had given you the second statement did you say his case looked fairly bad for him or anything to that effect?
A256. No.
Q257. He just came in, made the statement and walked out the door?
A257. We questioned him for maybe three-quarters of an hour before he made the second statement, and in fact he admitted nothing until we had told him actual facts we had uncovered that proved his first statement was absolutely false.
Q258. The second statement was not voluntary on his part?
A258. It certainly was. He was warned, given the proper warning, and I warned him and P.C. Wright warned him.
Q259. Which was the one written out the night before by him?
A259. That has not been produced because it is a conglomeration of nothing.
Q260. But he did make some sort of a statement on a piece of paper, is that correct?
A260. Yes, I have still got it.
Q261. Have you read it?
A261. You can't make sense of it.
Q262. What is it?
A262. Practically the same as a betwixt and between the first and second statements.
Q263. In that statement he gave you, did he admit he bought the liquor?
A263. No, definitely not; he admits he bought the beer, but not the liquor. In his statement to the civilian police when I was present he denied having bought the liquor, and in fact, to my knowledge the only time he admitted it was to Col Redmond. He never has admitted it to me yet.
Q264. The statement, "I did not buy the liquor nor did I receive any money to buy it with," - as far as you know he has never recd the money to pay for liquor; he has not, as far as you know, recd the money for the liquor?
A264. As far as the evidence which is being produced, he has recd money for the liquor.
Q265. Did he make a statement to you to that effect?
A265. He has never admitted it to me.
Q266. Then this statement, as far as you know, might be correct?
A266. It might be.
Q267. Was he under oath at the time he made this statement to you?
A267. No.
Q268. He made the statement to you that he did not buy the liquor, nor recd any money to buy it with?
A268. Yes.
Q269. He has not admitted that is not correct?
A269. Except in the second statement he alters it. He has altered his first statement His first statement denied he ever saw Miss English in any shape or form that day in Guildford. His second statement admitted that, but would not admit he had bought the liquor. He bought the beer, according to his statement, but not the liquor.

6th witness) for prosecution) No B-37965, PTE. K. SPENCE, No 2 C.D.I.R.U., being duly sworn, is examined by the prosecutor:-

The witness identifies himself.

Q270. What were your duties in the Admin Wing of No 2 CDIRU on 19 Mar last?
A270. I was driving a truck.
Q271. How long have you been employed at that job?
A271. At No 2 Camp, sir; I had been there at the time just a little over a month.
Q272. Are you still employed as a driver?
A272. Yes, sir.

Q273. Do you recognise the accused, Cpl Farmer?
A273. Yes, sir.
Q274. Did you have a trip with him on 25 Mar last?
A274. Well, I don't remember the date.
Q275. Do you remember having any trip with him around that time?
A275. Yes, sir.
Q276. Where did you go?
A276. To Guildford, sir, with the accused.
Q277. What were you driving?
A277. A 15-cwt military vehicle.
Q278. All right; what happened at Guildford?
A278. We went to Fremlin's Brewery, but we could not get in at the time.
Q279. For what purpose did you go there?
A279. We had some empties on our truck, sir.
Q280. What happened?
A280. We went to Cranleigh, sir.
Q281. What happened there?
A281. We picked up some empties in Cranleigh.
Q282. Where did you pick them up, do you remember?
A282. We picked them up at a house outside of Cranleigh, and picked the rest up at the town hall.
Q283. What part of the house were they taken from?
A283. I think they were taken from a garage.
Q284. Were they empty cases?
A284. Yes, sir.
Q285. And at the town hall, what happened?
A285. I helped to load some empties there.
Q286. What were these empties, do you remember?
A286. Beer bottles and glasses.
Q287. Did anything happen while you were at Cranleigh?
A287. Yes, sir.
Q288. What?
A288. A civilian policeman came in at the garage, and took my number, and the number of the truck.
Q289. Was there any conversation between him and Cpl Farmer?
A289. No sir; I believe he spoke to Cpl Farmer, but I didn't hear any conversation.
Q290. Now, from the town hall where did you go?
A290. We proceeded back to Guildford.
Q291. And there what did you do?
A291. Went back to the brewery, but we could not get in for half an hour or so, so we had to wait.
Q292. Finally you got in and unloaded?
A292. Yes sir, and then got some full cases of beer and took them back to Camp 102, to the Sgts Mess, Witley.
Q293. Do you recall if the name "Cranleigh" was on the work ticket you had for this trip when you started out?
A293. No, sir.
Q294. Was it on it at any time?
A294. Yes sir, it was put on by me after the trip.
Q295. What was the work ticket for; how did it read, do you remember?
A295. I filled it out myself for the morning; the usual run is Guildford, Aldershot, Farnham, or something like that, and I just wrote it in like we do for routine days.
Q296. Have you often been accompanied by the accused?
A296. Just twice.
Q297. You mean you were only to the brewery with him twice prior to 25 Mar?
A297. No sir, once before; that was the second time I was out with him; the other time was a month before that, and we just went to Guildford to the brewery then.
Q298. You are not especially assigned for the Sgts Mess driving then?
A298. No, sir.

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Q299. Do you know what the accused, Cpl Farmer's, position was in the camp?
A299. Yes, sir.
Q300. On numerous occasions various drivers have been more or less assigned to go with him in the course of his duties?
A300. That is right.

Q301. This time you speak of, have you authority to fill out the work ticket?
A301. Yes, sir
Q302. How is it signed?
A302. By the T.O.
Q303. Is it usually filled out before you go?
A303. It is.
Q304. Is it unusual to fill it out after you come back?
A304. Yes, sir.
Q305. Why did you do it on this occasion?
A305. It was changed; I changed it when I came in, and reported it to the T.O.
Q306. Is that in the radius it is possible to go in the course of business for the Sgts Mess?
A306. Yes, sir.
Q307. I believe you went to this brewery in the first instance, and found the driveway was blocked?
A307. Yes, sir.
Q308. Did he mention what he had to go to Cranleigh for?
A308. Yes sir, he said to pick up some empties and look for some "Crisp" for the baker.
Q309. Did he mention what type of party it had been the night before?
A309. Yes, he mentioned it was Warships Week and he had to bring back the empties.
Q310. Did he mention an officers' dance?
A310. No, sir.
Q311. Did he mention certain officers from the unit there?
A311. I don't remember that.
Q312. He might have said it, though?
A312. He might have done, but I don't remember.
Q313. As far as you know, he was within his rights picking up these bottles from this house?
A313. Yes, sir.

Q314. THE COURT: Do you know what caused the civilian police to come in and take your number?
A314. No, sir.

Q315. PROSECUTOR: There was some mention of "Crisp"; what is "Crisp?"
A315. As far as I know it is used for baking purposes.
Q316. Did the accused look for this in Cranleigh?
A316. I don't know.
Q317. Did you go anywhere besides this house?
A317. I drove back behind the town hall and Cpl Farmer left the vehicle and I don't know where he went; we were there about 10 or 15 mins before he came out, or before he came back to the truck.
Q318. Where did he come from?
A318. It might have been the town hall; it might have been up the street, sir.

The prosecution is closed.

DEFENCE

Q319. Do you apply to give evidence yourself as a witness? (R.P. 40 & 41 duly complied with).
A319. Yes, sir.
Q320. Do you intend to call any other witness in your defence?
A320. Yes, sir.
Q321. Are they witnesses as to character only?
A321. No, sir.

Before calling evidence for the defence, def officer submitted a prima facie case had not been established and asked for dismissal of the second and third charges.

Court was closed for consideration of def officer's submission.

The Coutt being re-opened, the accused was again brought before it.

THE COURT: The ruling of the court is that a prima facie case has been made in both the second and third charges, and the defence will proceed with their evidence.

1st witness) for the defence) No. H-19158, CPL. J. FARMER, the accused, being duly sworn, is examined by the def officer:-

The accused identifies himself.

Q322. What was your position at the time of these alleged offences?
A322. I was in the position of buyer for the Sgts Mess of 2 CDIRU at the time of the Cranleigh Warships Week dance.
Q323. What was your job, your duties, as mess buyer?
A323. My duties were to buy anything concerned with the mess - food, matches, beer, whisky - anything concerned with the mess, for the three messes and three bars. I could go within a 25 mile radius. For Alton I had to get a special chit, and I could get a truck almost each day if I wanted it.
Q324. You know of the dance in question?
A324. Yes, sir.
Q325. Give the court an idea of how you were approached and what happened during the preparation for this dance?
A325. The thing started about two or three weeks before the dance. Lt Gagnon came to me and asked me if I thought I could help them in buying some liquor for the dance at Cranleigh Hall. I said I didn't know, but that I would try.
Q326. Did he say who it was for?
A326. For the Warships Week dance at Cranleigh. He explained to me who they were and he said, "Don't bother just now, but I will let you know again." About a week before the dance he came to me again and asked me if I could do it, and I said I thought I could make it. He said, "You have a chance to make some money here, you can run it on your own," and I said the Sgts Mess would not allow that; I said, "However, if there is no dance of our own in the Sgts Mess I will help to run it for you." I was called back and forth by Lt Gagnon. He came to the Sgts Mess bar nearly every night talking about it. I said, "How did you get a permit?" Of course, I knew him well before the war, and I used to call him by his first name, "Jimmy" and he called me "Jean." I said, "What about a permit?" and he said, "We will have a permit for you, Jean, there will be no trouble for you at all," and I said, "O.K., I will do the best I can." We talked back and forth every day; if I wasn't there when he called I would find a message from him when I came back; he would leave messages at the bar that I was wanted in the orderly room, or else he would come and see me at the bar.
Q327. Did he say anything to you about how to take it to this place?
A327. He told me I could take it out in army truck while I was on my other duties. Of course I didn't often go to Cranleigh, I went the odd time to as we say scrounge for different stuff for the mess.
Q328. When you went to this brewery, tell me what it was for?
A328. Yes sir. I said a Warships Week Dance was being held at Cranleigh. They asked me if there was a permit from the police and I said that the officer had told me there would be a permit for it.
Q329. Did you sell to civilians at this dance?
A329. No sir, I don't remember selling to any civilian. I did give a few rounds of drinks to one civilian woman for the orchestra or the committee, on authority of Miss English, but they were not sold.
Q330. What happened after the dance?
A330. Major Worsick told me to close the bar, and Lt Gagnon told me to take the liquor left back to the bar and I said I would not take it there, and he said I would not get into any trouble and I said I had been through enough trouble already, and it was decided to take the stuff back to the house where I had taken it the first time.
Q331. What were his words with regard to the trouble after the dance?
A331. When we came in the house, when we brought the stuff back I handed the money to him, and Miss English and Pte Hudson were in that room, and I told Lt Gagnon, I said, "You promised everything would be arranged properly and if you had kept your promise I would not be in this trouble today," and he said, "Don't worry, I will see you don't get into trouble; I will tell everything as it happened."
Q332. When did you see Capt Creasy?
A332. Four or five days after; I don't remember the date exactly.

Q333. You made a statement to him. What were the circumstances?
A333. I made a false statement at the instigation of Lt Gagnon, and then I was told by a few friends of mine I was crazy to do that and I would have to take the rap, and I was questioned again by Capt Creasy, and from a couple of hints I took it that Lt Gagnon had not made that statement in his evidence, and I saw P.C. Wright and asked him if I could see him next day in Guildford, and I went to his office and in Lieut Gagnon's evidence nothing was mentioned about him telling me I would not get into trouble or anything like that.
Q334. Now, you saw Capt Creasy a second time, did you?
A334. Yes.
Q335. What happened?
A335. The second time, I made a true statement. The first time I figured they were going to put me under arrest and I wanted to go out that night and I said if I could go out two nights I would make a true statement. I then made a statement on a writing pad and the next day they called me in and I started to make a true statement and I didn't remember it all because I had a truck accident on my mind, and I took the statement out of my pocket and read it, and Capt Creasy took it and when I reached for it again he said, "Don't you dare touch it or I will tear you to pieces," and I said, "Maybe you could, you are big enough."

CROSS EXAMINED BY THE PROSECUTOR

Q336. Who is your C.O.?
A336. Major Worsick.
Q337. He was at the time of this incident?
A337. Yes, sir.
Q338. Did he know you were making these arrangements?
A338. No sir, not as far as I know.
Q339. You never reported it to him?
A339. No, I never spoke to him about it at all.
Q340. You had no permission from your C.O. or any other military authority to go to that dance working in the bar?
A340. Only from Lt Gagnon.
Q341. But he is not even in the same coy as you?
A341. But I slept in the same camp as Lt Gagnon.
Q342. You were at this time purchaser for the Sgts Mess?
A342. Yes, sir.
Q343. Who was Pres of the Sgts Mess?
A343. CSM Robertson.
Q344. Did you mention this matter to CSM Robertson or any other NCO?
A344. I think I mentioned that if the Sgts Mess wanted some more of that liquor - gin and rum and whisky - I had a chance to get it. I think CSM Robertson said they could not get any money from Capt Scott at that time.
Q345. What has this to do with the dance?
A345. Oh, no - Only mentioned it to Lt Gagnon, that's all.
Q346. You heard Lt Gagnon say that he had spoken to the Pres of the Sgts Mess about it and that he spoke to you, telling you he had spoken to the Pres of the Sgts Mess about it; do you remember that?
A346. Yes, sir.
Q347 And that you told him it would be better to look after it yourselves, that you could make more money for the committee and yourself?
A347. That is what he said, but he never spoke to me about that. That statement is not correct.
Q348. He never told you he had spoken to the Pres of the Sgts Mess about this dance?
A348. No, sir.
Q349. I should point out to you the seriousness of that. However, you are under oath. You say Lt Gagnon was not tell the court the truth when he made that statement?
A349. That is right.
Q350. Now, as a matter of fact Miss English did give you money to buy liquor?
A350. Yes, sir.
Q351. How much?
A351. £63.
Q352. When you first saw her she offered you less than that?
A352. Yes, she offered me a cheque for £50 the first time, that was on the 19 Mar in Guildford, and I refused it. I said I would not take a

cheque, that she would have to go and cash it and bring more money with her and I would try to get more liquor if possible, and she brought back £63.

Q353. In otherwords, you had ordered more than she wanted?
A353. I was trying to get enough to take up the £63.
Q354. Why?
A354. Lt Gagnon told me to get all I could.
Q355. And before this meeting with Miss English you had arranged with the brewery for £63-worth?
A355. A couple of days before that I asked the brewery how much they could let me have and they said they were not sure, but some, and all they could let me have was £43-odd plus £1 and something for the lime juice.
Q356. When you went to purchase this liquor, did you use a Cdn Govt vehicle?
A356. Yes, sir.
Q357. When you conveyed the liquor to Cranleigh you used a Cdn Govt vehicle?
A357. Yes, sir.
Q358. You knew that was wrong?
A358. Lt Gagnon said I would not get into trouble for it because I spoke to him about it.
Q359. What made you think you would not get into trouble simply because this friend of yours, this "Jimmy," said it would be all right? You don't meant to tell me that you, as purchaser for the Sgts Mess, believed you could go over the country running bars at dances, simply because a friend of yours tell you it is all right?
A359. He said there would be a permit, sir.

THE COURT: I don't think some of those questions are relevant. It is evidence to substantiate charges; you want to know whether Lt Gagnon and the accused were at cross purposes or not?

PROSECUTOR: That is correct, sir. We are only interested in it from the military, and not the civil, standpoint. That is right.

Q360. You heard the evidence of Const Mayes that you were selling liquor to civilians?
A360. That is wrong, too.
Q361. That is a lie also?
A361. Yes, sir.
Q362. Did you serve any liquor to women at the dance?
A362. Just to a lady who came to get drinks for the orchestra and the committee, although he might have seen some men and women not in military uniform at the bar, but the liquor was bought for them by either some officers or Ptes and they could easily have handed it to the civilians; it is done.
Q363. Did Miss English tell you not to sell to civilians?
A363. Yes, I am pretty sure she did.
Q364. How much money did you take in that night?
A364. I took back approx £50. There was £9 she had given me for petty cash, for making change.
Q365. And she paid you £7?
A365. Yes, and gave me £2 for my helper.
Q366. After the trouble at the dance you still used a military vehicle?
A366. Not my own.
Q367. Well, none of them are your own, but it was a military vehicle used to gather up the empties at Cranleigh Town Hall and at the garage by the house?
A367. It was a military vehicle, yes sir.
Q368. And you took that to Fremlins Brewery?
A368. Yes sir - oh yes, two or three days after, it was my own vehicle then.
Q369. It was a military vehicle?
A369. Yes, sir.
Q370. And you did that, knowing there had been some trouble at the dance?
A370. Yes sir, I had to collect those empties because they were charged to me.
Q371. And you never reported this dance to any Sr Officer?
A371. Just to Lt Gagnon; he is still in my coy. I was attached to the Admin Wing, but I used to get my pass from my own unit just the same.

THE COURT: I think the accused might very well look upon Lt Gagnon as being his Sr Officer.

PROSECUTOR: I am not familiar with the set-up in this camp, sir. I know that is all.

2nd witness) for the defence) No. H-20326, PTE HUDSON T., No 2 C.D.I.R.U., being duly sworn, is examined by the defending officer:-

The witness identifies himself.

Q372. Where are you employed?
A372. I am employed at Jasper Camp, at the Sgts Mess.
Q373. Are you accuainted with the accused?
A373. Yes, sir.
Q374. You knew him quite well, did you?
A374. Yes, sir.
Q375. Tell me in your own words what happened during Warships Week?
A375. I knew about two weeks before they were going to have this dance, but the accused did not ask me until the day of the dance if I would go down there and help him.
Q376. What inquiries did you make?
A376. I didn't make any inquiries, sir.
Q377. But you knew Lt Gagnon?
A377. Yes, sir.
Q378. Has he been in the mess at various times?
A378. Yes sir, quite regularly.
Q379. Did you ever hear him discuss this with the accused?
A379. Quite often.
Q380. What did he say?
A380. They talked quite a bit about this party they were going to have, I thought it was a party at a private house, and then on one occasion he asked the accused if he would take the whole thing on his own, in his own hands, and the accused came to me after Lt Gagnon had left and asked me what I thought of it, and I said, "You would be crazy to do that; if there is any trouble about it you will be the one to blame for it."
Q381. Was anything said with reference to a permit?
A381. He told him he had got a permit and everything was all right; about two days before Lt Gagnon told the accused everything was fixed and they were going ahead with the dance.
Q382. After the dance do you remember anything Lt Gagnon said in the presence of the accused?
A382. We left the dance hall about 12.30 and went to Miss English's house, that was after the police had stopped the bar, and the accused said to Lt Gagnon, "I don't want to get into trouble about this," and Lt Gagnon said, "You have nothing to worry about, we had a permit and there was just some slip-up." He said, "Everything will be all right;" he said that it would be straightened out next day.
Q383. Did he make any statement to the accused as to what he should do from then on?
A383. He just said there was nothing to worry about, that it would all clear itself up in a couple of days.

CROSS EXAMINED BY THE PROSECUTOR

Q384. Did you serve any liquor that night?
A384. Yes sir, I did.
Q385. To everybody that came along?
A385. No, I was told to only sell to men in uniform.
Q386. Who told you that?
A386. The Cpl.
Q387. And is that all you served liquor to?
A387. Yes, sir.
Q388. Did you serve liquor to any of the women there?
A388. No, sir.
Q389. Were there many men in uniform at that dance?
A389. Yes sir, there were a lot of officers there.
Q390. Did you serve to O.R. as well as officers?
A390. Yes, sir.
Q391. To anyone in uniform who came along?
A391. Yes, sir.

Q392. You say Lt Gagnon had intimated to the accused everything had been fixed up and they were going ahead with the dance?
A392. Yes, sir.
Q393. Were those his words?
A393. I could not express his exact words, I was not taking it down or anything on note paper; I just happened to overhear it.
Q394. Did you hear anything said about permission for the operation of this bar being sought from the Pres of the Sgts Mess at any time ?
A394. No sir, it had nothing to do with the Mess whatsoever.
Q395. Do you remember seeing Lt Gagnon in the bar that evening, the night of the dance?
A395. Yes sir, he was behind the bar before it opened - I guess to see how things were going.
Q396. Do you remember the police coming in there?
A396. I was out dancing at the time.
Q397. Did you see the police in there?
A397. Yes, they had the place closed up and they let me come in; there was a policeman standing at the back door, just behind the bar.

Q398. DEFENCE: Who was the Pres of the Sgts Mess at this time?
A398. CSM Robertson.
Q399. It was not Sgt-Maj Belfry?
A399. No, sir.
Q400. What was his position?
A400. He was on the auxiliary committee. (sic)
Q401. So anybody making inquiries of him would not be making inquiries of the Pres?
A401. No sir, they would not.

Upon conclusion of closing addresses by the defending officer and prosecutor, the Court is closed for the consideration of the finding.

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

The Prosecutor, LIEUT. G.M. MORRISON, HQ, C.R.U., presents to the Court AF B296 and certified true copy of MFM-6 in relation to the accused. AF B296 and MFM-6 were admitted in evidence without formal proof, with the consent of the defending officer.

The above mentioned documents are read, signed by the President, and attached to the proceedings.

3rd witness for the defence) No. B-67071, A/C.S.M. ROBERTSON J., 4 Infy Wing, No 2 C.D.I.R.U., being duly sworn, is examined by the defending officer:-

The witness identifies himself.

Q402. Are you familiar with the accused?
A402. Yes, sir.
Q403. What is his position with you?
A403. At the time of the alleged offences he was employed by No 2 CDIRU as buyer for the Sgts Mess.
Q404. Can you give us some idea as to his character or the type of man you found him to be and what sort of a job he did?
A404. So far as the job he did for our mess is concerned, sir, he did a very good job, and I always found him honest and above board. I had the books audited when I heard of this trouble, and everything was quite in order and above board.
Q405. You have never had any trouble with him?
A405. None at all, sir.

THE COURT: Do you wish to address the court?

DEFENDING OFFICER: There are one or two points I would like to bring out if I may, sir. I was unable to get the accused's C.O., Major Worsick, as he is away at the present time, but we have produced the person he worked directly for, that is CSM Robertson. The accused man has been in the army since 5 Sep 39. He has had one crime against him,

AWL while in Canada. I understand at that time he had certain "wife trouble;" she ran away with another chap or something of that sort. He was awarded certain punishment for that offence. Since that time he has a clear record, has done his work very well, and everyone seems very well satisfied with the way he has performed his duties. From 1919 to 1921 he served with the Lord Strathcona Horse in Canada and had an honourable discharge from that unit, with no record of any crime. He did his job as he saw it, and after this trouble arose another man was put in his position in the Mess and the accused lost his actg rank, he lost his job in the Mess, and I submit that is quite a punishment because it was apparently a very good job, and at the present time he is acting as Cpl of the kitchen fatigue. He has been C.B'd. the camp for at least three weeks, which in itself is something, and I would ask the court to take all those facts into consideration when considering sentence.

The Court is closed for the consideration of the sentence.

CERTIFIED a true and correct transcript of my shorthand notes:-

Sgt.

Shorthand Writer.

List of witnesses for the Prosecution

In the case of M-19158 Cpl. Farmer, J.

1- K-98019 Pte. S.R. Ferguson
Transport Section
2. C.D.I.R.U.

2- B-37965 Pte. K. Spence
Transport Section
2. C.D.I.R.U.

3- Miss Margaret Elizabeth English
Cranleigh, Surrey.

4- Sgt. No. 3 Charles Henry Mayes
Leatherhead Division
Surrey County Constabulary

5- Lieut. J.J.D. Gagnon
6th Trg. Wing
2. C.D.I.R.U.

6- Capt. Creasy
D.A.P.M.
C.R.U.
C.A.(C).

List of Witnesses for the defence.

Nil

LIST OF EXHIBITS

In the case of Cpl. Farmer, J. M-19150

The two work tickets, necessary for this case, are in possession of the Court Martial Officer i/c of Lieut. J.J.D. Gagnon court-martial.

.....Capt.
(J.W. Mossop
6th Training Wing
2. C.D.T.P.C.)

Date and place of Trial or summary award, or of Order dispensing with Trial	Charges upon which convicted, or in respect of which Trial was dispensed with	Sentence of the Court or Authority disposing of the charge, or Order of the Dispensing Authority	Punishment remitted

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

Signed this 27th day of April 1942

Lieut.
C.O. 6 Det. Wing
2 C.D.I.B.U.

Army Form B.296.

Statement as to Character and Particulars of Service of Accused.

No. **H-19158** Rank **Cpl.** Name **J.Farmer** of the **2nd C.D.I.B.U.**

1. The following is a fair and true summary of the entries in the Regimental and Squadron, Battery or Company Conduct sheets† of the accused, exclusive of convictions by a court martial or a civil court, of summary awards under Section 47 of the Army Act, and of cases in which trial has been dispensed with:—

	*Within last 12 months.	*Since Enlistment.
For **A.W.L.**	times	**1** times.
For	times	times.
For	times	times.
For	times	times.

Number of instances of gallantry or distinguished conduct.

Nil

Of.

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

2. The accused has not been previously convicted.

Nil

Of.

Previous convictions† of the accused by a court martial or a civil court, summary awards under Section 47 of the Army Act, and dispensations with trial under Section 78 of the Army Act, are set out in the Schedule annexed to this statement.

Nil

* The numbers inserted should correspond with the entries in the Regimental Conduct sheets. Where no entries appear in the Conduct sheets, the word "none" should be inserted in the space provided.

† Or, in the case of a soldier who has not yet been posted to a unit, in the Regimental Conduct sheets of the unit from which he was last discharged to the Reserve, or transferred to the Army Reserve, or to the Militia, or to the Territorial Army, or discharged with a view to his re-enlistment elsewhere.

Forms A.F. 664, 665, 666.

Instructions.—If the accused is not previously convicted, the entries in paragraph 2 should be struck out and initialled by the officer signing the statement.

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

or,

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

4. The accused has been in confinement, awaiting trial on the present charges

~~..... days in Civil Custody,~~

and 5 days in Military Custody. (OPEN ARREST)

Total 5 days.

Of which ..... days were spent in hospital.

5. The present age of the accused according to his ~~record of service~~ / attestation paper is 41

The date of his ~~commission~~ / attestation specified in his ~~record of service~~ / attestation paper is 5-9-39

7. The service which the accused is allowed to reckon towards discharge or transfer to the reserve is 2 yrs 8 mos

8. The accused is entitled to deferred pay or gratuity in respect of 2 yrs 8 mos years' service.

9. The accused is entitled to reckon 2 yrs 8 mos's service for the purpose of determining his pension, &c.

10. The accused is in possession of, or entitled to, ~~no military decoration~~ or ~~military reward~~ [*or* is in possession of *or* entitled to

]

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

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

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

		Date of Promotion.
In the rank of	Corporal , 5 mos~~xx~~,	9th Dec. 1941
In the rank of	, years,	
In the rank of	, years,	

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

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

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

Army Number, Rank and Name H-19158 Cpl.Jean Farmer of the 2nd C.D.I.R.U.

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

Description of Court by which tried, or status of Officer imposing of the charge or dispensing with Trial.	Date and place of Trial, or summary award, or of Order dispensing with Trial.	Charges upon which convicted, or in respect of which Trial was dispensed with.	Sentence of the Court or Authority disposing of the charge, or Order of the Dispensing Authority.	Punishment remitted.

(*continued overleaf*)

No. R-19158 Name Farmer, J. Sqn., Battery, or Company Inf. Corps R.C.C.I. of C. Date of enlistment 6-9-39 G.C. Badges Service or Proficiency Pay

M.F.M. 6 (A.F.B. 122)

Date of last entry in Company Conduct Sheet 28-10-40 No. and date of last drunk Nil Period not reckoning towards freedom from extra fine Sheet No. Signature O.C. Company, etc. Character

Place	Date of offence	Rank	Cases of drunkenness	OFFENCE	Names of Witnesses	Punishment awarded	Date of award or of order dispensing with trial	By whom awarded	Remarks
Winnipeg	30/10/40			Last sheet deatroyed 5-1-41 A.W.L.		7 days C.B. 7 days pay	30/10/40		

Certified true copy of Corporal J. Farmer, J. R-19158

R.F.M. 6 ..... Capt

D. Fletcher Major ..... Lt. Col.

for O.C. 6th Trg. Wing.

(R.T.O.)

D Hatch

MEDICAL OFFICER'S CERTIFICATE

K.R. (CAN) PARA 552

I certify that I have this morning examined

No. H-19158 Cpl. Farmer, J. .....

of Queen's Own Cameron Highlanders of C. and in my opinion he

is fit to undergo Trial by Court Martial.

Station Jasper

Date 11 May 1942

D.S.P. Bruce Capt.
Medical Officer

SUMMARY OF EVIDENCE

In the case of Corporal [redacted], Farmer, J. H- 19158

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

1st Witness for the Prosecution: K-92019 Pte. S.R. Ferguson, Admin. Wing, No. 2. C.D.I.R.U. having been duly sworn states:

I am, No. K-92019 Pte. S.R. Ferguson, of the Transport Section of No. 2. C.D.I.R.U. On the 19th March 1942 I drove my 15 cwt. with A/Sgt. Farmer. The trip commenced at 0815 hrs and ended at 1715 hrs. We visited Friaries Brewery at Guildford. The number of cases loaded into the truck there was probaly a dozen some of which were pasteboard boxes. I did not know what they contained. We then proceeded straight to Cranleigh and stopped at what appeared to be a private house. A/Sgt. Farmer had some conversation with a somewhat elderly woman who was on the lawn, thereafter he unloaded the entire contents of the truck and stored same in the garage attached to the house. He then went into the house. He came out of the house. I also saw a younger lady. We then proceeded to Farnborough to the Pep-si-cola plant. From there we returned to camp via Aldershot. A/Sgt. Farmer told me to drive the truck to the house in Cranleigh or to follow a car which stopped at the house in Cranleigh. He said to the effect that the goods loaded at Friaries were for use at an Officers dance at Cranleigh. He said he would be at the dance the next night to look after the drinks. I did not see Lieut. Gagnon in connection with this trip nor did I hear his name mentioned. The wooden cases and pasteboard cartons were I think approximately a dozen in all. The cartons would probaly hold about a dozen bottles. In addition to the above there were glasses and beer picked up at the beginning of the trip from the central storeroom of the Sgts. Mess Laurentide Camp. There were close to a dozen cases. These appeared to be full of bottles of beer. With this addition there would be in all about 18 cases or cartons. I alone helped A/Sgt. Farmer load the cases at the Sgts. Mess. I saw some soldiers coming in and out of the storeroom during that period. I recognise Exhibit No. 1, the work ticket now before me as being the work ticket for this trip.

S.R. Ferguson
(Pte. S.R. Ferguson, K-92019)
2. C.D.I.R.U.

The accused declines to cross-examine the witness.

SUMMARY OF EVIDENCE

In the case of (Corporal [illegible]) Farmer, J. M-19158

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

2nd Witness for the Prosecution: No. B-37965 Pte. K. Spence, Admin. Wing No. 2 C.D.I.R.U. having been duly sworn states:

I am, B-37965 Pte. K. Spence of the Transport Section of 2. C.D.I.R.U. I recognise the work ticket now before me No. 2-1001 as being that issued to me to cover a trip on the 25th March 1942 which I made accompanied by Sgt. Farmer. The trip commenced at 0830 hrs and ended at 1630 hrs. This day we picked up some empty beer cases at Jasper Camp did some transferring of supplies between camps and left for Guildford arriving there shortly after 10 o'clock. We stopped at Fremlins Brewery Sgt Farmer was to unload the empties but the driveway was obstructed by trucks loading. We had early lunch returning to Fremlins to find the trucks still there. Sgt. Farmer then instructed me to drive to Cranleigh. He said we have some empties to pick up there and look for some "Crisp" for cooking purposes. When we got to Cranleigh we slowed down until Sgt. Farmer found the house he was looking for. We stopped there. There was a woman digging in front of the house. She appeared to be about 30 years of age, Sgt Farmer got out and talked to her about loading some empties from the garage. I backed the truck in and stayed in the cab while Sgt. Farmer loaded the empty beer cases from the garage. I did not see into the garage. He was talking to the lady. A civilian uniformed policeman arrived on a motor cycle. He stopped, looked into the truck and spoke to Sgt. Farmer, asked me for my work ticket and regimental number which I gave him. Sgt. Farmer then got into the truck and told me to drive on. The policeman remained there. We proceeded into Cranleigh and went to the Town Hall and picked up other empty beer bottles and glasses. I helped Sgt. Farmer load them. Counting the two cases from the house this made 10 cases in all. Sgt. Farmer did not go anywhere in Cranleigh. We proceeded to Guildford. We went to Fremlins Brewery. Trucks were still in the driveway. We arrived at approximately 1245 hrs. Sgt. Farmer went in and came out and said we would have to wait until 1315 hrs to unload. At 1330 hrs the trucks moved out, we unloaded all of the empties and loaded on about 15 cases of beer but no other beverage. We proceeded to Laurentide Camp where we unloaded the beer at the central storeroom Sgts. Mess, bought some supplies at the N.A.A.F.I. took them to the same storeroom and then took some canned goods to the Sgts. Mess at Jasper Camp. Sgt. Farmer went into the Cameron Office came out and directed me to drive the truck to the Officers Mess which I did. Sgt. Farmer got out I remained in the cab. I did not see whether he took anything out or not. Sgt. Farmer said that was all and I returned to Laurentide Camp. As the name Cranleigh was not on my work ticket I wrote it on when I returned to camp. I reported the trip to Cranleigh to Capt. Keen and the occurances with the police.

K. A. Spence.....

(Pte. K. Spence, B37965
2. C.D.I.R.U.)

The accused declines to cross-examine the witness.

SUMMARY OF EVIDENCE

In the case of [redacted] Farmer, J. H-19158

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

3rd Witness for the Prosecution: Miss Margaret Elizabeth English of Cranleigh, Surrey having been duly sworn states:

I, Margaret Elizabeth English, a resident of Cranleigh Surrey. In march 1941 a committee at Cranleigh held a War Weapons Week dance. The committee had a bar operating at the dance by an R.A.S.C. Unit. There was no trouble or difficulty respecting the operation of this bar. This year the Cranleigh Warship Week Committee, I being the chairman of its Entertainment Committee, desired to hold a dance on the 20th March and I attempted to arrange for a bar to be operated there. I contacted certain parsons operating licensed premises in or near Cranleigh but they said they did not have the necessary staff nor the time to procure a license. The committee pointed out that last year I had procured a bar from the military and suggested that I try again. I knew Lieut. Gagnon. I asked him if he could provide a bar and he said he would try. I went to the Cranleigh Police to report my intentions. They suggested among other things that the guests should bring bottle. I thought that might lead to too much drinking and possibly unpleasantness. The police suggested that I might have a Military bar, that is, a bar where no civilians were sold drinks. This police sgt. later denied that he had made such a statement respecting a military bar. I subsequently had further conversation with Lieut. Gagnon asking him that if L/Sgt.Farmer would carry on a bar for me and suggested that I meet him with a cheque in Guildford on the 18th March at 1330 hrs. I arrived in Guildford on the 18th about 15 mins. late Sgt. Farmer was not there. I saw Lieut. Gagnon at my home in Cranleigh lateron the 18th March. He asked me if I had seen Sgt. Farmer and I said "No". Lieut. Gagnon telephoned me and asked me to meet Farmer at Guildford at 1030 hrs on the 19th March opposite the "Red Lion". I met Sgt. Farmer and offered him a cheque for £ 50.0.0. signed by the Treasurer and Secretary of the Committee and drawn on Lloyds Bank Cranleigh. He said that the beverages he had purchased for the dance had cost more than that and that he would require £ 63.0.0. I suggested that I would have to return for the additional £ 13.0.0. he wished me to cash the cheque and hand him the £ 63.0.0. in cash. I returned to Cranleigh cashed the cheque got the additional £13.0.0. from the committee's monies, returned to Guildford at approximately 1200 hrs with my mother and met Farmer opposite the "Red Lion". Farmer got out of an Army Vehicle which was about 50 yards down the street. My mother got out of the car to do some shopping at Whites. Farmer got into the car and I counted out and paid him the £63.0.0., £ 50.0.0 being in ten £ 5.0.0. notes. Farmer got out of my car and got into his lorry, drove past my car and parked. I moved my car in front of Whites. Farmer came over and asked me to hurry. My mother came back to the car. Farmer rode with us to his lorry and got out and got into his lorry. I drove to Cranleigh followed by Farmer's lorry. I stopped at the "Hollies" on Guildford Road where I/staying with my friend Mrs. Musgrave. Sgt. Farmer backed his lorry into the garage. His driver got out of the lorry and was talking to my mother in my car. Farmer then unloaded ten cases of beer, cartons containing 12 bottles of White Horse Whiskey, 24 bottles of Rum, 12-½ -bottles of Gin and four dozen beer tankards. He opened the cartons showed me what they contained and told me how many he had, which I verified. Sgt. Farmer then drove away in the lorry. I had no discussion either with Lieut. Gagnon or Sgt. Farmer as to the quantity of spirits or beer which was to be furnished. I had no communication with Lieut. Gagnon or Farmer until about 1930 hrs. on the 20th March when my sister returned to my parents home having gone to Witley and brought back Farmer. My sister told me that Lieut. Gagnon had said that the orchestra arranged for (Bandmaster Garnett's) was not available but that he had got another orchestra and would come to the dance with it. I then drove with Farmer to the Cranleigh Village Hall. Lieut. Gagnonwas there with the orchestra and I saw that things were getting under way. I had only casual conversation with Lieut. Gagnon. I drove Sgt. Farmer to Mrs. Musgrave's house and there received the message Lieut. Gagnon had telephoned earlier to the effect that he believed he would Orderly Officer and might not be able to attend the dance. With Sgt. Farmer I then drove the car and conveyed the beverages to the dance making two trips. The dance got under way and the bar opened and operated. Lieut. Gagnon drove me to my mother's

SUMMARY OF EVIDENC

In the case of Pt Corporal) Far 9158

By the direction of the Commanding Officer t
taken on oath.

4th Witness for the Prosecution: Sgt. No. 3
Leatherhead Division, Surrey County Constabu
sworn states:

I am, Sgt. No. 3 Charles Henry M
Surrey County Constabulary, on Tuesday 17th ance. We then
English came to me respecting a War Weapons after 2200 hrs.
leigh on the 20th March 1942. She said she wi lain clothes and
advised her to get an occasional license. She d I went down to
could arrange a Military Bar from Witley. I s e policeman what
they could serve only their own members. I s served to a civili-
might bring bottles and that no bar be operat t. Lieut. Gagnon
approve of that suggestion. She said that I went down to the
and see if I could get a drink, meaning that one of the artist
would be served. Directly after 2200 hrs on ance hall and
visited the dance in the village hall. The ca l closed. I said
and they had closed the front door. I then wa some days ago, I
I heard the man in charge who I am informed is was opened. I
" Next Please". I watched the proceedings. I police again
whom I knew, purchase two drinks. I saw other is a teetotaller
being served. I do not know whether or not the bar was clo-
went for Const. Bundy. We returned and observe ng beverages. I
whom I knew purchasing drinks. I then asked S e committee and
charge. He shouted for someone to get Major W I saw some beer
Sometime afterwards Major Worsick approached. he hall. Other
a license. He said "No". Mr. English then sai were drinking
had been made that drinks would not be sold to aid him £ 7.00
out that Sgt. Farmer was still selling drinks, ess amounts were
with Major Worsick, Major Worsick closed the b said the balance
At about 2320 hrs. I took a walk around the vi 63.0.0. I first
the same voice saying "Next Please". I went ba opened the bar
and we went into the bar. I instructed Const. alance of the sto-
of a women whom I had seen purchasing two beer about noon on
had a discussion with Major Worsick and I ouse in an Army
patrons left and Lieut. Gagnon said that he wo two empty crates
went back to the mess. I remained until the st nsumed spirits
which was transporting the band. I might expla oliceman approa-
license is a license which may be obtained onl . The civilian
license is a license which may be obtained onl talk with Farmer.
nsees, or a Military Mess holding a comprehens . I opened it and
when it is desired to sell alcoholic beverages scussion regarding
that for which their yearly license is held. No and I telephoned
an occasional license. him how long it
t day I was ill
and taken away

Chas .....
(Sgt. No.
Leatherhe
Surrey, C

English .....
English

The accused declines to cross-examine the witne

SUMMARY OF EVIDENCE

In the case of Corporal Farmer, J. R-19158

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

4TH WITNESS for the Prosecution: Lieut. J.J.D. Gagnon, Queen's Own Cameron Highlander's of Canada, 6th Training Wing, 2. C.D.I.R.U. having been duly sworn states:

I, Lieut. J.J.D. Gagnon, Queen's Own Cameron Highlanders of Canada say, that I was approached by Miss M.E. English in the early part of March and asked if the Canada Military would supply a bar for the Cranleigh Warship Week Dance along the same lines as a bar supplied by the R.A.S.C. last year (1941). This being a worthy cause I told her I would try. I approached the President of the Sgt's Mess and asked him in the view of the fact that the Sgt's. Mess always seemed to have a good supply of liquor on hand would they help the cause by stocking and running a bar at the said dance. He said he thought this could be arranged. I had no further conversation with the President of the Mess because on telling Sgt. Farmer of my discussion with the President he immediately stated," The Committee and myself will make more money if I deal with them independently from the mess". I conveyed this information to Miss English who in turn assured me permission had been obtained to operate such a bar from the local police. Miss English not being able to communicate with Sgt. Farmer by telephone on several occasions asked me to convey messages to Sgt. Farmer and he likewise asked me to convey to Miss English messages which I was able to do thru our Officers Mess Phone. I was not aware, until after the dance as to the amount of money paid out by the committee to Sgt. Farmer for the purchase of liquor nor was I aware where the liquor was being purchased.

.....J.J.D. Gagnon.....Lieut.
(J.J.D. Gagnon,
Queens Own Cameron Highlander's of Canada
6th Trg. Wing, 2. C.D.I.R.U.)

The accused declines to cross-examine the witness.

SUMMARY OF EVIDENCE

In the case of Cpl. Farmer, J H-19158

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

6Th Witness for the Prosecution: Captain F.B. Creasy, D.A.P.M. H.Q. Canadian Reinforcement Units, Canadian Army (Overseas). having been duly sworn states:

I, Captain F.B. Creasy say, that, on 27 Mar 42 at "A" Group Headquarters, Witley Camp, whilst investigating certain matter in connection with a Warship Week dance held at Cranleigh on 20 Mar 42, H-19158 Sgt. J. Farmer gave me a signed statement which included the sentence:- "I did not buy the liquor nor did receive any money to buy it with, I have not been paid for the beer yet." Sgt. Farmer was properly warned that there may be charges laid against him and the proper warning read to him. He signed the above statement.

On 2 Apr 42. H-19158 Sgt. Farmer, again being warned both by F.C. Wright, Farnborough Borough Police, and by myself, again made a statement which was written down and read to him, extracts as follows:- "I saw Miss English when she came back about one hour after the first time. I got into her car about the same place, just below the traffic lights. She said, "I got £ 13 here". She offered me £ 5 for my beer and asked for 2/6 change. I did not take it. She then said, "I have a few more pounds, could you try and buy me some more spirits", as she did not think she had enough to go around. I refused and said No, I had been to enough trouble over the matter now and for her to go ahead with her car and I would follow".

If the statement as sworn to by Sgt. Farmer in his evidence in summary taken in the case of Lijuot. Gagnon had been given on the 27 Mar 42, this investigation would have been completed withiñ 24 hours. Owing to the above statements, it took me practically until the 4th April, 1942, to complete the evidence.

F.B. Creasy Capt.
.....Captain
(F.B. Creasy
D.A.P.M.
C.R.U.
C.A.(O).

The accused declines to cross-examine the witness.

The accused having been duly cautioned in accordance with R.P.4(e)

Reserves his Defence.

SUMMARY OF EVIDENCE

In the case of N-19152 Cpl. Farmer, J

Certified that all the provisions of R.P. 4. (c) (d) (e) (f) and (g) have been complied with in connection with the foregoing Summary of Evidence.

Taken down by me in the presence and hearing of the accused this 21st day of April 1942.

.....Capt.
(J.W. Mosaop
S.S.R.
6th Trg. Wing
2. C.D.F.R.U.)

H.Q.C. 55-F-851 CONFIDENTIAL

DEPARTMENT OF NATIONAL DEFENCE—OTTAWA, CANADA

SUBJECT—

FIELD GENERAL COURT-MARTIAL

FAIRBURN, SILAS B-88238 SPR

CONFIDENTIAL
H.Q.C. 55-F-851

CENTRAL REGISTRY	DATE	P.A. OR A.G.	INITIALS	REFERRED TO	FOR	INITIALS	DATE
				(If purpose for which referred cannot be expressed on one line enter here "With Minute")			4-9-46
FEB - 3 1948	3-2-48	PA	Dole	QMG	PER	DAG	

OVERSEAS COMBINED

IN REPLY PLEASE QUOTE

No.

CANADA

DEPARTMENT OF NATIONAL DEFENCE
ARMY

29th Jan 1948

(1)

JAG: Attn: Mr. RICE

Would you bring this to the attention of COL. Shaw again. It is a Court-Martial, not a Court of Inquiry-- all C.55- files are Courts-martial.

No file should be allowed to leave the department unless specific authority is given. That is why this was sent to the J.A.G. office per minute 2, please,

C.R. Confidential

(2) 29/1/48
CR(Conf)2-
This file may be forwarded to DJA provided adequate precautions are taken to ensure its return.
WMWShaw Col
DJAG

N.D. 25
750M—15-41 (2244)
H.Q. 1773-101-23

DEPARTMENT OF VETERANS AFFAIRS

To Central Registry

Date 24.1.48

The following files are required by MA.25 Division

Regt'l No.	Title or Name	Pension No.	Remarks (for use by C.R.)
NZ.88238	FAIRBURN, SILAS		
	COURT OF INQUIRY REGARDING THE ABOVE ON 23/2/42		
	FILE C.55.F.851		
	MAY WE HAVE THE ABOVE FILE, PLEASE.		

N.B. Regimental Number must be quoted.

D.V.A. 143 50/M—7-47 Reg. 243

Signature or Orcini.

111 K.

Correspondence to be PINNED here.

Army Form A 3.

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

PROCEEDINGS.

On Active Service, this 21st day of July, 19 42.

A. Order convening the Court.

Whereas it appears to me, the undersigned, an officer in Command of Headquarters Medium Artillery, First Canadian Army, Overseas, on active service, that the persons named in the annexed Schedule, being subject to Military Law, have committed the offences in the said Schedule mentioned.

And whereas I am of opinion that it is not practicable that such offences should be tried by an ordinary General Court Martial; *[illegible]

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

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

*[illegible]

* Omit if not applicable.

PROCEEDINGS REVIEWED. [illegible] Capt. Armouring Officer (Ord. Depot) 6 Aug 42.

President.

Rank.	Name.	Regiment.
Major	H.A. Maclean,	6 Fd Pk Sqdron, 4 Cdn Armd Div. R.C.E.

Members.

Rank.	Name.	Regiment.
Lieut.	K.H. Pudney,	45 Cdn Gen Tpt Coy. RCASC.
Lieut.	C.O. Rochon,	#1 Cdn Fld Pun Camp, Cdn Prov Corps.

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

*Signed R. Leach (R.W. Leach) Brigadier, Commanding C.C.M.A. - First Cdn Army.
Convening Officer.

SCHEDULE.

Number, Rank (a), Name and Unit of Accused (b)	Offence charged	*Plea	Finding, and if Convicted, Sentence (c)	How dealt with by Confirming Officer (d)
B58238 Sapper Silas Fairburn, 1 Cdn Spec Tunn. Coy. R.C.E.	First Charge:- A.A. Sec. 15(1)	Guilty.	Found Guilty. 180 days detention ~~Date of sentence July 21-1942 135 days pay~~ July 21-1942 Jam-	I confirm July 24th 1942

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

(Signed) R Stuart, Brigadier, (Signed) Jamaican major.
Commanding C.C.M.A. First Cdn Army. (e) 6th H. Park Jam. President.

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

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

B. Certificate of President as to proceedings.

I certify that the above Court assembled on the 21 day of July, and duly tried the persons named in the Schedule, and that the plea, finding, and sentence in the case of each such person were as stated in the third and fourth columns of that Schedule.

I also certify that :—

1. The members of the Court
2. The witnesses
*(3. ~~The Interpreter~~ Shorthand-writer Jam.
*(4. ~~The officers under instruction~~)

* Omit if not applicable.

were duly sworn.

Signed this 21 day of July 1942

Jamaican major.
President of the Court Martial.

C. Certificate in case of death sentences.

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

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

Signed this day of 19

President of the Court Martial.

D. Confirmation.

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

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

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

Signed this 24th day of July 1942

R Stuart Brigadier
C.C.M.A. Cdn. Corps
Confirming Officer.

Promulgated and extracts taken in the case of

(a) (Dated) 27 Jul 42 (Signed) OWatson Capt.
OC No 1 (S) Tunnelling Coy RCE

Promulgated and extracts taken in the case of

(Dated) (Signed)

Promulgated and extracts taken in the case of

(Dated) (Signed)

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

44710 Wt. 40113—493 ... Pad. P. St. G. 4/42

Ham

CHARGE SHEET

The accused, No. B-88238 Sapper Fairburn, S. of No. 1 Canadian (S) Tunnelling Coy., Royal Canadian Engineers, Canadian Army Overseas, is charged with:-

First Charge
Sec. 15(1) Army Act

Whilst on Active Service, absenting himself without leave, in that he at Cove absented himself without leave from 2359 hours 15-2-42 until reporting at Mickleham Hall at 0100 hours 2nd July, 1942. Absent 135 days 1 hour 1 minute.

H Watson

(H. Watson) Capt.
A/Officer Commanding, 1 Cdn (S) Tunnelling Coy
Royal Canadian Engineers
Canadian Army Overseas

In the Field

8 July 1942

To be tried by Field General Court Martial.

22 July 42

R J Leach

(R.J. Leach) Brigadier,
C.C.M.A. - First Cdn Army

1.

Harr.

MEDICAL OFFICER'S CERTIFICATE

K.R. (CAN) PARA 557

I certify that I have this morning examined No. B88238 Spr. Fairburn, S. of No. 1 (S) Tunnelling Coy RCE and in my opinion he is fit to undergo Trial by Court Martial.

Station...Field.....

Date..21.July.42...

A.B. Hammond Capt
Medical Officer

PROCEEDINGS OF A FIELD GENERAL COURT MARTIAL ASSEMBLED BY ORDER OF BRIGADIER R.J. LEACH, C.C.M.A., FIRST CANADIAN ARMY, OVERSEAS.

In the Field. 21 July, 1942.

THE TRIAL OF B66238 Sapper Silas FAIRBURN, of No. 1 Special Tunnelling Company, R.C.E., Canadian Army, Overseas.

PRESIDENT

Major H.A. Maclean,
6 Fd Pk Sqdron, 4 Cdn Arm.Div.

MEMBERS

Lieut. K.H. Pudney,
45 Cdn Gen Tpt Coy. RCASC.

Lieut. C.O. Rochon,
1 Cdn Fd Pun Camp Cdn Prov Corps.

PROSECUTING OFFICER - Lieut. R.L. Segsworth - 1 Cdn Spec Tunn Coy. RCE.

DEFENDING OFFICER - Capt. D. Taylor, Adj. 2 Cdn Corps Troops R.C.E.

At 1400 hours the Court is declared opened.

The Order Convening the Court, the Charge Sheet and Summary of Evidence are laid before the Court.

The Court complies with Rules of Procedures Nos. 22 & 23.

The Order Convening th Court is read, marked, signed by the President and attached to the Proceedings.

The Names of the President and Members of the Court are read over in the hearing of the Accused and they severally answer to their names.

Q.1. Do you object to be tried by me as President or by any of the Officers whose names you have heard read Over ?

A.1. No, sir.

The President and Members of the Court are duly sworn.

The Courtroom is cleared of Witnesses.

Q.2. Do you object to M7297 Pte Herchek, F. as shorthand writer ?

A.2. No, sir.

The Court Reporter is duly sworn.

The ChargeSheet is signed by the President and annexed to the Proceedings.

The Accused is arraigned upon the First Charge.

Q.3. Are you guilty or are you not guilty of this charge which you have heard read ?

A.3. Guilty, sir.

The Accused having pleaded guilty to the first charge the provisions of R.P. 35(b) are now complied with.

The Court is closed for consideration of Findings.

.....2/

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

The Court have found B86238 Sapper Silas FAIRBURN, of No. 1 Special Canadian Tunnelling Company, R.C.E. Guilty on the First Charge.

The Reading of the Summary of Evidence is dispensed with on the agreement of the Defence andProsecution and is marked, signed by the President and attached to the Proceedings.

Q.4. Do you wish to make any statement in mitigation of Punishment ?

A.4. Yes, sir.

Q.5. Do you wish to give evidence yourself or to call any witnesses as to character ?

A.5. No, sir.

The Accused Proceeds to make a statementin mitigation of Punishment.

" I started back when I joined this Tunnelling Coy. We were told that we were going to get 50¢ trades pay, that was before we went to Gibraltar. Major Campbell, he took up a section and told us that we were all qualified tradesmen and that our trades pay would be through as soon as possible. The trades pay came through, I don't know the exact date but it was in May or June 1941 and I was the only Miner in the No. 1 Tunnelling Coy that didn't get the 50¢ a day trades pay. Then when we got back to England I was only home a short while when I was sent to Northern Scotland to work on another Mining Job. I was on a machine and got only 25¢ trades pay in my book I was doing a 50¢ a day trades pay job. From there I came back to England where everything seemed to go against me, I didn't get a square deal, besides the family trouble I had at home made me go away. I didn't mean to stay away as long as I had, I drank a lot while being away until I made up my mind definately to go back as I knew I had to go back sometimes. I returned and will take my punishment and start over again. That is all, sir.

Examined by the Court:

Q.6. What did you do while you were away ?

A.6. I didn't do anything but drink and eat.

Q.7. What didyou do for money ?

A.7. I had money.

Q.8. You went A.W.L. because you thought you were getting a raw deal ?

A.8. Yes, sir.

The Court proceeds to Examine the Prosecutor.

Q.1. Have you any evidence to produce as to character and particulars of service of the Accused ?

A.1. I produce this Statement.

The Prosecutor Lieut. R.L. Segsworth, No. 1 Cdn Spec Tunn Coy RCE. having been duly sworn submits in evidence AFB 296 being a statement as to character and particulars of service of the Accused and a certified true copy of the MFM 6 being the Conduct Sheet (Field) of the Accused.

.....3/

/3.....

These statements are read, marked Exhibit A & B respectively and are annexed to the Proceedings, signed by the President.

Q.2. Is the Accused the person named in the statement which you have heard read ?

A.2. Yes, sir.

Q.3. Have you compared the contents of this statement with the Regimental Books ?

A.3. Yes, sir.

Q.4. Are they true extracts from the Regimental Books and is the statement of the entries in the conduct sheet a fair and true summary of those entries ?

A.4. Yes, sir.

The Defence declines to cross examine, but proceeds to make an address.

" I was his Commanding Officer in Gibraltar and during that time Fairburn was an excellent worker and was recommended for trades pay, had it not been for the two offences it would have come through. That is all I have to say sir."

The Court is closed for consideration of Sentence.

SUMMARY OF EVIDENCE in the Case of B88238 Spr. Fairburn, S. of the No. 1 Canadian Special Tunnelling, R.C.E. By the direction of the Commanding Officer the Summary of Evidence is taken on Oath.

1st Witness for the prosecution

Lieut. R.L. Segsworth having been duly sworn states:- "I am Lieut. R.L. Segsworth, officer i/c records for the No. 1 Cdn Special Tunnelling Coy., R.C.E. and submit a certified true copy AB 161 "Record of Declaration of Courts of Inquiry on Illegal Absence of Soldiers.""

Sgd. (R.L.Segsworth) Lieut.

The accused declines to cross examine the witness.

2nd witness for the prosecution

B5841 Sgt. Calladine, S.J. of the No. 1 Cdn Spec. Tunnelling Coy RCE having been duly sworn states:- "I am Sgt. Calladine, S.J. B5841, acting Sgt. Major for the No. 1 Cdn Spec. Tunn Coy R.C.E. On taking inspection at 0100 hrs 2 July 1942 of all men on late pass I came upon Spr. Fairburn, and asked him who he was, and asked who gave him permission to stay in the billets as recently we have had several stray men coming in. He replied that his name was Fairburn. I recognized his name and knew him to be an absentee. I immediately got the Orderly Cpl and two men for guard and put Spr. Fairburn under close arrest in the guard room."

Sgd. (S.J.Calladine) Sgt.
B5841.

The accused declines to cross examine the witness.

3rd witness for the prosecution

Lieut. R.L. Segsworth having been duly sworn states:- "I am Lieut. R.L. Segsworth, officer i/c records for the No. 1 Cdn Special Tunnelling Coy., R.C.E. and submit "Certificate Under Army Act sec. 163(1)(J)

Sgd. (R.L. Segsworth) Lieut.

The Accused having been duly cautioned in Accordance with Rule of Procedure 4 (E) elects to reserve his defence.

Sgd(S. Fairburn) Spr
B88238

Certified that Rule of Procedure 4 (c)(d)(e)(f) & (h) has been complied with.

Taken down by me in the presence and hearing of the Accused this 8th day of July, 1942.

Sgd. (Y.H. Williamson) Lieut.
No. 1 Cdn Spec Tunnelling Coy RCE.

The accused desires to have Capt. D. Taylor, R.C.E. to defend him at his Court Martial.

Exhibit 21

CERTIFIED TRUE COPY FROM A.B.161 - RECORD OF DECLARATIONS OF COURTS OF INQUIRY ON ILLEGAL ABSENCE OF SOLDIERS.

RECORD of the Declaration of a Court of Inquiry assembled at Cove on the 9 day of March 1942, for the purpose of investigating and recording the absence, without leave, from his duty, and deficiency, if any in the Arms, Ammunition, Equipments, Instruments, Regimental Necessaries, or Clothing of No. B88238 Spr. Fairburn, S.

DECLARATION.

THE COURT DECLARE:-

That B88238 Spr. Fairburn, S.

illegally absented himself without leave on the 16.2.42 That he is still absent and that on the 18.2.42 he was and still is deficient articles to the value of £13 - 17 - 3½

NAMES OF PRESIDENT AND MEMBERS

Lieut. W.J. Burgess President.

Members (Lieut. J.B. Kirk
(Lieut. R.L. Segsworth

SIGNATURE OF COMMANDING OFFICER

(Colin A. Campbell) Maj.
O.C. No. 1 Cdn. Tunnelling Coy.
Royal Canadian Engineers.

Certified True copy

R Segsworth Lieut

Summary of Evidence in the Case of B88238 Spr. Fairburn S. of the No 1 Canadian Special Tunnelling Company R.C.E. By the direction of the Commanding Officer the Summary of Evidence is taken on oath.

1st witness for the prosecution

Lieut R.L. Segsworth having been duly sworn, states;
I am Lieut R.L. Segsworth of this Co records for the No 1 Can. Special Tun Coy RCE, and submit a certified true copy, AB161 "Record of Declarations of Courts of Inquiry on Illegal Absence of Soldiers".

R.L. Segsworth Lieut.

The accused declines to cross examine this witness.

2nd witness

B58411 Sgt. Calladine S.J. having been duly sworn, states;
I am Sgt Calladine B58411, acting Sgt. Maj. for No 1 Can Special Tun Coy RCE. On taking inspection at 0100 hrs 2nd July 1942 all men on leave pass I came upon Spr. Fairburn, and asked him who he was, and asked who gave him permission to stay in the billets, as recently we have had several stray men coming in. He replied that his name was Fairburn. I recognized his name and knew him to be an absentee. I immediately put the orderly Cpl. and two men for guard and put Spr Fairburn under close arrest in the guard room.

S.J. Calladine Sgt

3rd witness for

Lieut. R.L. Segsworth, having been duly sworn, states;
I am Lieut R.L. Segsworth of this Co records for the No 1 Can. Special Tun. Coy. RCE., and submit Certified true copy of Under Army Act sec 103 (1) J.

R.L. Segsworth

The accused having been duly cautioned in accordance with Rule of Procedure 4 (E) elects to reserve his defence.

Sgt Silas Fairbairn

Certified that Rule of Procedure 4 (d)(e)(f)(g)(h) has been complied with.

Taken down by me in the presence and hearing of the accused this 8th day of July 1942

In the field

Sgt Williamson Lieut
No 1 Coh Sum Coy RCE

The accused elects to have Capt D Taylor to defend him at his Court Martial.

Exhibit C

SCHEDULE "G"

CERTIFICATE UNDER THE ARMY ACT, Section 163 (1)(J)

I, Lieut. R.L. Segsworth ...certify that

Reg.No. B88238 Rank Spr Name Fairburn, S.

REGIMENT No. 1 Special Tunnelling Company,

UNIT Royal Canadian Engineers.

STATIONED AT Field

Surrendered himself to No. B5841 Rank Sgt Name Calladine, S.J.

of the No. 1 Special Tunnelling Company, Royal Canadian Engineers,

on the 2nd day of July 1942., at 0100 hours,

AS AN ABSENTEE WITH OUT LEAVE.

at the time of his surrender he was wearing (military uniform) or

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

Segsworth Lieut

(R.D. Segsworth)
Orderly Officer of day 2.7.42
1 (S) Tunnelling Coy., RCE

M.F.M. 6 (A.F.B. 122) 10M/41—8-19 (1703) H.Q. 1772-45-18

No. B.88239 Name A1 Fairburn S. Sqn., Battery, or Company Cpr. Scot.R.(MG) Date of enlistment 27-11-39 G.C. Badges Service or Proficiency Pay

Date of last entry in Company Conduct Sheet — No. and date of last drunk — Period not reckoning toward freedom from extra fine — G.A.S.F. Sheet No. 2 — Signature O.C. Company, etc. — Character

Place	Date of offence	Rank	Cases of drunkenness	OFFENCE	Names of Witnesses	Punishment awarded	Date of award or of order dispensing with trial	By whom awarded	Remarks
				Verified to date. 27-5-40					
Mickleham	15.9.&pr. 40.		nil	A.W.L. 1230 hrs.15-9-40 to 2100 hrs17-9-40. Absent 2 days,7 hours 30 minutes.A.A. Sec 15(1)	No.1 Cdn. Tranching Coy. R.C.[illegible] Schofield	of 3 days pay	18-9-40	Major Campbell	
Mickleham 12 & 13-10-40	Spr			Neglect the predj in that he failed to report for shift. A.A. Sec. 40	Cpl. Armstrong	fined 2 days pay plus loss of 2 days pay	2-11-40	Major Campbell	

Exhibit "B"

(P.T.O.)

Place	Date of offence	Rank	Corps or regiment or unit	OFFENCE	Name of witness	Punishment awarded	Date awarded or of order dispensing with trial	By whom awarded	Remarks
Cove, Hants	25.1.42.	Spr.		A.W.L.2359 hours 25.1.42 to 1700 27.1.42 A.A.Sec 15(1) Abdent 1 day 17 hours and 1 minute	S.M.Wilson Cpl Smither Sgt Calladine	Forfs 2 days pay Total 4 days pay	30June42	Major C.A. Campbell	Loss of 2 days pay
Cove Hants	1.2.42	Spr.		A.W.L.2359 hrs. 1.2.42 to 1700 hrs 9.2.42 Abs.7 days 17 hrs A.A.Sec15(1)	S.M. Wilson	Forfs 24 days pay Total 32 days pay	13.2.42	Major Campbell	Loss of 8 days pay.

Certified True Copy.

[signature]

ARMY FORM B.296.

Statement as to Character and Particulars of Service of Accused.

Number	*Rank*	*Name*	*Regiment (or as the case may be)*
B-88238	Sapper	Fairburn, S.	No. 1 Cdn.(S) Tunn Coy.R.C.E

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

NOTE.—At a trial by field general court martial this summary may be compiled from the field conduct sheet. The conduct sheet(s) mentioned should be produced in court with this statement but not annexed to the proceedings.

† See para. 977, K.R., 1940.

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

INSTRUCTION.—If the character-sheet records the entries for drunkenness must be stated separately and dated.

	*Within last 12 months.	*Since Enlistment.
For A.W.L.	2 times	3 times.
For Cond to Prodjf failed to report for guard duty.	times	1 times.
For	times	times.
For	times	times.
For	times	times.

Number of instances of gallantry or distinguished conduct, Nil

or

There are ~~X~~ entries in the conduct sheets of the accused.

2. The accused has not been previously convicted, *or*

Previous convictions† of the accused by a court martial or a civil court, summary awards under section 47 of the Army Act, and dispensations with trial under section 73 of the Army Act, are set out in the schedule annexed to this statement.

3. The accused is not under sentence at the present time, *or* The accused at the present time is under sentence for N.A. beginning on the ..... day of .....

4. The accused has been in confinement, awaiting trial on the present charges, for NIL days in civil custody, and ~~10~~ 20 days in military custody, making a total of ~~10~~ 20 days, of which N.A. days were spent in hospital.

5. The present age of the accused according to his attestation paper is 34 years 1 month 24 days

6. The date of his attestation specified in his attestation paper is 19.11.39

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

8. The accused is entitled to deferred pay or gratuity in respect of N.A. service.

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

10. The accused is in possession of, or entitled to, no military decoration or military award (*or* is in possession of *or* entitled to (*state any military decoration or reward*)). Nil

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

12. (*If the case of an officer.*) The accused holds in the army the rank of N.A. dated ..... and in his regiment (or corps or department) the rank of ..... dated .....

(Printed) W 5007/155 250,000 8/41 A.A.&W.Ltd. Gp.438

Exhibit "2"

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

No. B88236 Rank Spr Name Fairburn, S. of Regiment (or as the case may be).

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

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

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

Signed this 21st day of July 1942

---

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

In the rank of ..... years.

In the rank of ..... years.

In the rank of ..... years.

Date of Promotion.

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

No. 1 Canadian Special Tunnelling Coy., R.C.E.

I, B-88238 Spr., Fairburn, S. wish to have Capt. D. Taylor represent me at my trial.

Signed/ S. Fairburn
(S. Fairburn) Spr.
B-88238

H.Q.C. 55-F-852 CONFIDENTIAL

DEPARTMENT OF NATIONAL DEFENCE—OTTAWA, CANADA CROSS REFERENCE

SUBJECT FIELD GENERAL COURT-MARTIAL

FELLOWS, L.F. L-84565 GNR.

CONFIDENTIAL H.Q.C. 55-F-852

CENTRAL REGISTRY	DATE	P.S. OR D.P.	INITIALS	REFERRED TO	FOR REMARKS	INITIALS	DATE
	5 9/46	[illegible]	GS	JAG	NEW FILE	CR	4-9-46
SEP 6-1946	10/9/46	[illegible]	[illegible]	[illegible]	To secret file	GS	5-9-46
SEP 24 1946	24/9/46	[illegible]	[illegible]	[illegible]	PER REQUISITION OF SEP 16 1946		
					WITH PAPERS OR OCT 15 1946		
OCT 1 5 1946 OCT 17 1946	16/10/46	[illegible]	[illegible]	JAG	[illegible]		15 Oct 46

NOTICE

C A N A D I A N A R M Y

T.36-10-282-2 (A2)
HQ MD 2
1 Oct 46

CENTRAL REGISTRY
OCT 3 1946
File 255-F 852
Chgd. to Admin 16-9
Referred to

OC 2 DD

OC 86 MDB

AHQ (infm)

REMISSION OF SENTENCES

1 The DOC MD 2 has reviewsthe sentences of the following soldiers, and has remitted the sentences effective the dates as shown:

G.54421	Pte	COLDRICK G F	-eff 1 Oct 46
G.53891	Pte	BECKWITH J W	-eff 2 Oct 46
G.48906	Spr	BOUCHIE J R	-eff 2 Oct 46
D.63566	Pte	BROUILLETTE C	-eff 2 Oct 46
B.96976	Pte	CLAUS D	-eff 2 Oct 46
B.79374	Pte	CRUISE D L	-eff 2 Oct 46
H.17022	Pte	DUFRESNE G	-eff 2 Oct 46
L.84565	Gnr	FELLOWS L F	-eff 2 Oct 46
B.134823	Pte	KESTING J H	-eff 2 Oct 46
M.30886	Pte	MacKENZIE T I	-eff 2 Oct 46
K.69441	Pte	McINTYRE J G	-eff 2 Oct 46
B.58855	Pte	PRESTON G E	-eff 2 Oct 46
R.602046	Pte	SELBY J H	-eff 2 Oct 46
L.38	Gnr	SMITH E L	-eff 2 Oct 46
H.103478	Pte	WILSON H J	-eff 2 Oct 46

2 Att hereto (to 2 DD only) is Appx "G" to CARO 3193 and Form "L" authorizing the remission and release of the s/m soldiers.

3 May the said remission now be promulgated to these SUS, Parts IV and V of Appx "G" completed and returned to this HQ.

4 2 DD will be responsible for transporting soldiers from 86 MDB on dates shown.

for (N S Cuthbert) Lt.Col.
AA&QMG MD2

/MHF

CANADIAN ARMY

CENTRAL REGISTRY ARMY
CONF. SEC.
11902
OCT 12 1946
File 215-2-852
Chgd. to
Referred to Admin

T.36-10-282-2 (A2)
HQ MD 2
10 Oct 46

AHQ Ottawa

Remission of Sentences

1 Herewith completed Appx "G" to CARO 5193 for the u/m soldiers.

2 Also enclosed are MFsM 288 or MFsA 3104 for disposal:

E.101412	Pte	CLARKE E
G.54421	Pte	COLDRICK G F
B.79374	Pte	CRUISE D L
H.17028	Pte	DUFRESNE G
K.51174	Gnr	ERICKSON L E
L.84565	Gnr	FELLOWS L F
B.528768	Pte	GAUDREAULT G
B.606083	Pte	GRONDIN A S
K.5041	Gnr	HAGEN M
B.61278	Pte	HILL A L
B.104823	Pte	KEETING J H
M.30886	Pte	MacKENZIE T I
K.69541	Rfn	McINTYRE J G
B.58855	Pte	PRESTON G E
M.63843	Spr	PIFIEFER J
B.94016	Pte	SAYLES R T
F.802046	Pte	SELBY J H
L.38	Pte	SMITH E L
H.103478	Pte	WILSON H J

for P.L. Sauvé maj
(H A Sparling) Brig
DOC MD 2

/HHF

Army Form A 3104.

REVIEW OF SENTENCES AWARDED BY COURT MARTIAL.

I.—Case of No. L-84565 Gnr Fellows L.F. Unit X-4 List RCA att 2 Cdn Dis Unit

Sentenced to 150 days detn on 29 Jul 46

Age on, and date of, enlistment 20, 13 Feb 42. Term of service duration

FIRST TRIAL.

For details of offences, see paragraph VII.
For C.O.'s remarks, see paragraph IX.

II.—To ..... Superior Military Authority.

I have directed that the above-named be not committed to undergo his sentence, which I recommend should be (suspended) (put into execution) (1) for reasons given in paragraph X.

Place .....

Date ..... Confirming Authority.

III.—I direct that the sentence (which I hereby commute to .....) (of which I remit .....) (1) (2) (be suspended) (be put into execution) (1) and be reviewed on ..... (3).

Place .....

Date ..... Superior Military Authority (4).

(For action on review, see paragraph VI.)

SECOND TRIAL.

For details of offence, see paragraph VIII.
For C.O.'s remarks, see paragraph XII.

IV.—(5) To ..... Superior Military Authority.

This man was again convicted on ..... and sentenced to .....

and I have directed that he shall not be committed to undergo his sentence, which I recommend should be (suspended) (put into execution) (1) and run (concurrently) (consecutively) (1) with the previous (5) sentence for the reasons given in paragraph XIII.

Place .....

Date ..... Confirming Authority.

V.—(5) I direct that the sentence (which I hereby commute to .....) (of which I remit .....) (1) (2) (be suspended) (be put into execution) and that it run (concurrently) (consecutively) (1) with the previous (6) sentence of ..... and be reviewed on ..... (3).

Place .....

Date ..... Superior Military Authority (4).

(1) Erase words not required, and initial erasures.
(2) A sentence of penal servitude or imprisonment, combined with Discharge with Ignominy, cannot be suspended unless the Discharge with Ignominy is remitted.
(3) A suspended sentence must be reviewed at least once every three months, and a sentence put into execution should be reviewed in not more than six months.
(4) An order directing a sentence to be put into execution must be signed by the Superior Military Authority personally.
(5) This paragraph to be left unused until required. If the man is convicted a third time, a fresh form, using only paragraphs IV and V, will be made out and attached to this form, and all further reviews will be on the attached form.
(6) A previous sentence of imprisonment or detention in a state of suspension is avoided by the award of a subsequent sentence of penal servitude

(*26503) Wt 49340-415 50,000 1/44 A.& E.W.Ltd. Cp.498 Forms/A.3104/11

VI.—Action on Review.

(Whether the sentence or sentences are suspended or in execution.)

Any Reviewing Authority *under Section 57 of the Army Act* may under that Section mitigate, remit or commute a sentence which is in execution, and if the sentence as commuted or mitigated is penal servitude, imprisonment or detention, it will remain subject to the powers granted by Section 57A of the Army Act. A partial remission of a sentence in suspension is not legal.

All recommendations, etc., considered upon review, should be pasted here.

Date	Directions	Signature and Appointment of Authority giving the directions.	If sentence suspended, actual date of release and marks earned to count towards remission, and signature of O.C. Prison or Detention Barracks
	NO REMISSION - RETURN TO CANADA IN CUSTODY UNDER SENTENCE.	for (JC Murchie) Lieut-General Chief of Staff Canadian Military Headquarters 23 AUG 46.	
1 Oct 46	REMIT Eff 2 Oct 46	(N S Cuthbert) Lt.Col T/DOC MD2	

(Continued on page 4.)

If further space required, an additional slip should be pasted here.

Charge or Charges giving particulars	Date of Offence	Date of Trial
VII.—First Trial. AA Sec 15(1) - AWL at 1200 hrs 2 Apr 46 until he surrendered at 2100 hrs 16 Jul 46. (Absent 105 days 9 hrs) Signature of Officer making entry.	2 Apr - 16 Jul 46	29 Jul 46.
VIII.—Second Trial. Signature of Officer making entry.		

IX.—C.O.'s remarks and recommendations on First Trial.

Date	Signature

X.—Confirming Officer's remarks and recommendations on First Trial.

Date	Signature

AV

APPENDIX "G" TO CANADIAN ARMY ROUTINE ORDER NO. 5913

FORM FOR REMISSION, COMMUTATION, MITIGATION, SUSPENSION OR PUTTING INTO EXECUTION OF SENTENCE AWARDED BY CsM.

HQC 55-F-852
T.20-F-8586

PART I

No. L.84565 Rank Gnr Name FELLOWS L F
Unit 2.D.D.

PART II

Date of Trial 29 Jul 46 (FGCM)
Charge(s) AWL - AA Sec 15(1)

Sentence 150 days detn
Date of Sentence 29 Jul 46
Confirmation - (a) Authority (b) Date

RECEIVED by 1946 Central Registry M.D. No. 2

PART III
REMISSION

I, the undersigned, being the competent military authority under Section 57(2) of the Army Act (~~superior authority~~) do hereby remit (~~the sentence~~) the balance of detention awarded the above-named effective the 2nd day of Oct. 1946.

SIGNED at TORONTO, Ontario, this 1st day of October, 1946.

~~(N S Cuthbert) Lt.Col~~
~~T/DOC~~ MD2

PART IV
PROMULGATION

Remission ~~and Extracts~~ promulgated and Extracts taken at No. 2 District Depot, C.A. this 2nd day of Oct 1946

Officer i/c Documents

(1) Unit, attachment and appointment to be stated.

PART V
CERTIFIED TRUE EXTRACT OF DAILY PART II

No. L-84565 Rank Gnr Name FELLOWS L.F.
The sentence of 150 days detn awarded by FGCM Court-Martial on the 29th day of Jul 46 has been Remitted by 84 days on the 2nd day of Oct 1946 by Lt.Col. N.S.Cuthbert, T/DOC, M.D. No. 2 Unit

Certified True Extract of Daily Orders Part II of 3 Oct 46 - #240-23 Date 3 Oct 46
No. 2 DD Place Long Branch Camp, Ont.

Capt.
Adjutant No. 2 DD

X Strike out and initial words not applicable.

CONFIDENTIAL

Quote No HQC 55-F-852
Adm 3(b)3

DEPARTMENT OF NATIONAL DEFENCE
Army

OTTAWA, Canada, 23 Sep 46.

District Officer Commanding,
Military District No. 2,
TORONTO, Ontario.

L-84565 Gnr. FELLOWS, L.F.

Further to Ranks 1714 Unclas dated 17 Sep 46, herewith AFA 3104 and copy of CMHQ letter concerning the m/n soldier.

2. It will be noted that CMHQ has made no recommendation as to the disposal of this SUS.

Gaston Chartrand
Captain
for (E.C. Weeks)
Major-General,
Adjutant-General.

ENCL: 2

GLC:cr

G.S.

THIS COPY FOR:

H.Q.C.55-F-852
M.D.10/Fellows, L.F./1

FIELD GENERAL
MEMORANDUM - DISTRICT COURT-MARTIAL

No. L.84565 Name FELLOWS, L.F.

Rank Gnr. Unit K-4 List RCA(F) Att'd 2 Cdn Discipline Unit (NWE)

Charge A.A. 15(1) A.W.L.

Date of Crime 2 Apr 46

Date of Arrest 16 Jul 46 Charge Signed 24 Jul 46

Orders for F.G.C.M. Comdr. R.T.L.C.

Place and Date of Trial Field 29 Jul 46

Sentence 150 days Det.

Date of Confirmation 30 Jul 46

Date of Promulgation 30 Jul 46

Entered in Records of J.A.G. as No. 5157 Balance of sentence remitted by Conf. Auth. 1-10-46

Date 5 Sep 46

MEMO Found Guilty Being returned Canada in Custody to undergo sentence
Reviewed at CMHQ also NDHQ

for Judge Advocate-General

HQC 55-F-852 (JAG/D)

OFFICE OF THE JUDGE ADVOCATE GENERAL

5 Sep 46.

Canadian Military Headquarters,
2 Cockspur Street,
London S.W. 1,
ENGLAND.
(Att'd Major General i/c Administration)

L.84565 - Gnr. FELLOWS, L.F.

Receipt is acknowledged of your 10/Fellows, L.F/1, dated 29 Aug 46, under cover of which was forwarded original proceedings of FGCm 29 Jul 46 together with original AF A3104 in respect thereof.

(H.J. Orde) Brigadier,
Judge Advocate General.

/CG

AIR MAIL Quote No. 10/Fellows, L.F/1

CANADIAN MILITARY HEADQUARTERS

LONDON

29 Aug 46

CEN... CONF...
SEP 4 1946
File C55-F-752
Chgd. to
Referred to

CONFIDENTIAL

The Secretary,
Department of National Defence (Army),
Ottawa, Canada.

L 84565 Gnr Fellows, L.F.

1. The m/n soldier is now serving a sentence of 150 days detention awarded by FGCM 29 Jul 46 for an absence without leave from which he surrendered after 105 days (AA Sec 15(1)).

2. If he earns full remissions for good conduct while serving his sentence, the earliest date on which he should be released is 5 Nov 46.

3. This soldier has been medically examined and certified as fit to undergo his sentence.

4. It has been directed that this soldier be returned to Canada in custody under sentence, and he will be so returned as soon as suitable transportation is available. Herewith original proceedings of FGCM 29 Jul 46 together with original AF A3104 in respect thereof, on which this direction has been endorsed.

for (J.C. Murchie) Lieutenant-General
Chief of Staff
Canadian Military Headquarters

Encs 2

Copy to: OIC Records

5157

MHQ 1000-16
1/P & D/803 (7582)

Extract entered as No 5757 in the Record of Courts-Martial kept in the office of the Judge Advocate-General this 6th day of Sept 1946

SCHEDULE.

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

Accused: 2-84565 Gnr Fellows Leonard Francis (R-4 Inf C1C) 2 Can Disc Unit (NWE)

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

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

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

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

Time in confinement awaiting present trial—a total of 14 days, of which 0 days were spent in hospital.(1)

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

Sentence Awarded by the Court:

To undergo detention for five hundred and fifty days (550)

(Sgd) ..... Judge-Advocate, if any. 29 July 46 Date awarded. (Sgd) H A L Rose Major President. (RP 45/50.)

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

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

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

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

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

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

Finding and sentence confirmed

~~I direct that the accused be put committed to prison or detention barracks until further orders.(1)~~

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

Date 30 Jul 46 (Sgd) J Whitelaw Brig Commanding British Troops Low Countries Confirming Officer.

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

Accused.	Date.	Signature of Offr.
2-84565 Gnr Fellows, L.F.	30 Jul 46	2 CDN DISCIPLINE UNIT MAJOR ADJT. OFFR

ALL DELETIONS AND ALTERATIONS WILL BE INITIALLED.

RECEIVED AUG 22 1946 CMHQ

RECORDED AT CMHQ IN AB 160 CAO-2-28

CFPA96 (To lieu of AP 135) 40/P & S/1698 (6144). 4/38B

FIELD GENERAL COURT-MARTIAL

Convened by Order of Brig G S Hatter DSO OBE Comd B T L C dated 27 Jul 46

ACCUSED.

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

Number.	(a) Prmnt R.	(b) Appmt, A/R or A/Appmt.	Full Christian Names.	Surname.	Unit.
2-84565			LEONARD FRANCIS	FELLOWS	X-4 Inf RCA Fd 2 Can Disc Unit (NWE)

RECEIVED 22 Aug 46 C.H.Q. Ft. Maj.

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

PROCEEDINGS OF TRIAL.

Held in the Fd in (country) Belgium on (date(s)) 29 Jul 46

RECORD FORM A—OPENING PROCEEDINGS AND ARRAIGNMENT.

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

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

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

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

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

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

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

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

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

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

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

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

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

Ans No sir (2)

(1. RP 110. 2. If no objection, waiting member retires. RP 60(B). If objection, see procedure AA 51, RP 25, 71, 18, MML p 742.)

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

President	Major	H.A.L. Rose	CDC	2 Can Disc Unit (NWE)
Member	Capt	H B Knox	CDC	AAG (Pers) C in C HQ
Member	Capt	M A Cardinal	CDC	A/Military Attaché Brussels
Judge-Advocate				
Prosecutor	Major	E C Peckham	CDC	2 Can Disc Unit (NWE)
Defending Offr	Capt	P T H O'Neill	RCAC	2 Can Disc Unit (NWE)

Questions by President: Is the Prosecutor a lawyer? Ans Yes. Is the Defending Offr a lawyer? Ans Yes (3)

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

A8. The accused 2-84565 Gnr Fellows, Leonard Francis before arraignment make(s) (no) (a) plea (1)

(1. If a special plea is made for separate trial on one or more charges (RP 62(E), 109), or as to the jurisdiction of the Court (RP 34, 35(A), 113), or in bar of trial (RP 36), or as to accused's mental fitness to stand trial (AA 130, RP 37), or by one of several accused charged jointly to be tried separately (RP 16, 71), such plea, the addresses made in support or against, the evidence, if any, and finding are recorded per Notes. For forms of record see references in fns to RsP cited. Insert in AB rank and name of the accused making the plea.)

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

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

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

PRESIDENT OR JA WILL INITIAL ALL DELETIONS AND ALTERATIONS.

INSTRUCTIONS ON PROCEDURE AFTER ARRAIGNMENT.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

PRESIDENT OR JA WILL INITIAL ALL DELETIONS AND ALTERATIONS.

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

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

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

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

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

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

President to accused : Do you wish to give evidence yourself as a witness, make a statement, or do neither ? Ans..... Do you intend to call witnesses on your behalf ? Ans..... Are they witnesses as to character only ? Ans.....
(*1. RP 115. 2. RP 40(A), see 80(D). 3. RP 40 fn 10. 4. RP 40 (fn 2, 9.)*)

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

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

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

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

RECORD FORM E—PROCEEDINGS ON CONVICTION BEFORE SENTENCE.

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

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

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

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

E5. The Court considers the sentence.(1) The President records the sentence in Part I of the Schedule, which is dated and signed by him and the JA, if any.(2)
(*1. When several accused tried separately see RP 71 (D). One sentence only, comprised of the punishment or punishments laid down in AA 41, 44 and its proviso, is to be awarded to cover all charges in all charge sheets on which accused found guilty. RP 46. As to sentences see AA 44, 138, 182. RP 46-52, 69, 118, 119(A), KR Can 308, 330, 563-566. Overseas RD 309, 2323. MML p 60, 757-759. As to sentences assigned for civil offences by the law of England see AA 41(5), MML p 130. When accused already under sentence of imprisonment or detention see AA 44(1B), 68(1), KR Can 564. 2. RP 50. As to release from arrest by Confirming Offr see KR Can 567. As to assembly and disposal of record after trial see instrs on back of Convening Order.*)

PRESIDENT OR JA WILL INITIAL ALL DELETIONS AND ALTERATIONS.

MEDICAL CERTIFICATE

(AR(Can) Form 557)
(CMC CL 173)

Crack

I certify that I have this day examined B84565 (No.)

Gnr FELLOWS, L.F. and in my opinion he is
(Rank) (Name)

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

Station Boom

Date 29.7.44

W.S. Wilson Capt. (RAMC)
Medical Officer

(Unit) Central MS Coy
Brussels.

Hack

FIELD GENERAL COURT-MARTIAL

(Whether the accused to be tried is under his comd or not, a FGCM may on application to him be convened by any offr of Cdn Army Overseas, or of any other force if authorized in law, in immediate comd of troops on active service, subject to RP 105(C) and restrictions imposed by appropriate authy. AA 49, 50, RP 104-107, 114. As to the duties and privileges of the Convening Offr in dealing with the application see MML Chap V paras 20 and 23, RP 67(B).

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

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

ACCUSED.

Number.	(a) Prmnt R.	(b) Appmt, A/R or A/Appmt.	Full Christian Names.	Surname.	Unit.
L-84565	Gnr.		Leonard Francis	FELLOWS, (X-4	1ist RCA FD) 2 Cdn Discipline Unit (NWE)

CONVENING ORDER.

1. Whereas complaint has been made to me, the undersigned, that the person(s) named above as the accused, being subject to military law, ~~has (have)~~ committed the offence(s) set forth in the Charge Sheet(s) attached and on (date) 27 July 46 endorsed by me, ~~(or on my behalf by my staff for me)~~, "To be tried by Field General Court-Martial".

2. And whereas I am of opinion that it is not practicable that such offence(s) should be tried by an ordinary General Court-Martial; ~~[that it is not practicable to order the trial for reasons of operational exigency.]~~

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

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

~~X X X

Back

CHARGE SHEET

The accused, L-84565 Gnr. Leonard Francis FELLOWS, X-4 list, Royal Canadian Artillery (Field) attached to 2 Canadian Discipline Unit(North West Europe) a soldier of the Canadian Army Overseas, is charged with:-

Sec 15(1) Army Act — WHEN ON ACTIVE SERVICE, ABSENTING HIMSLEF WITHOUT LEAVE

In that he

In the Field, at 1200 hrs 2 April 1946 absented himself without leave until he surrendered himself at SCHEVENINGEN, Holland, at 2100 hrs 16 July 1946.
(Absent 105 days 9 hrs)

Colin Foster Lt-Col

(Colin FOSTER)Lt-Col.
Officer Commanding
2 Cdn Discipline Unit(NWE)

IN THE FIELD
14 July 1946

TO BE TRIED BY FIELD GENERAL COURT/MARTIAL.

G S Hatton

(G.S. HATTON)DSO,OBE
Brigadier
Commander
B.T.L.C.

IN THE FIELD
24 July 1946

Plea in Mitigation in the Case of 1.84565 - Gnr. FELLOWS, L. F. Hack

This soldier joined the army in Feb of 1942 and came to England in Feb of 1943. In November of 1943 he proceeded to Italy with the 17th Fd Regt of the 5th Div and served throughout the Italian campaign and in 1945 came with his Regt and took part in the Holland campaign.

In April of 1946 he came on leave from Oldenburg to Holland where his wife was and found her seriously ill and requiring an operation. He was advised by the doctor that his presence was necessary, so he wrote three letters to his commanding offr asking for an extension of leave to cover the period necessary. He received no reply and so stayed absent without leave. To show that this story is true I produce to the court these papers (Attached), they contain the certificates of the various doctors and the bills from the Hospital. I would draw your attention particularly to the doctor's certificate which gives the date when his wife was considered out of danger. That date is two days before he surrendered.

I would ask you to consider the mental stress under which this man was when he stayed absent without leave. He could go back to the Army and thereby not fulfill his obligation to his wife or he could stay absent, fulfill his obligation to his wife but not the Army. He has served continuously through two campaigns and his absence commenced long after the war was over. He has never appeared before an offr on any charge before this. I would ask the court to be extremely lenient in considering sentence.

Pte Gilbert - Capt

Exhibit A
Hack

SUMMARY OF EVIDENCE

In the case of L-84565 Gnr. Leonard Francis FELLOWS, X-4 list, Royal Canadian Artillery (Field) attached to 2 Canadian Discipline Unit(North West Europe) a soldier of the Canadian Army Overseas.

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

The following documents were laid before the Officer detailed to take Summary of Evidence and marked as Exhibits "A" and "B" respectively, pertaining to the accused, and initialled by him for the purpose of identification.

"A" A certified true copy of 2/12 CDN FD REGT RCA CAOF Pt. II Order No 23 dated 27 April 1946, showing the accused absent from 1200 hrs 2 April 1946.

"B" A certificate of Surrender of the accused, at Scheveningen,Holland, at 2100 hrs 16 July 1946.

The accused does not question the documents.

E C Peckham Major

(E.C. Peckham)Major
Officer detailed to take
Summary of Evidence.

The accused was cautioned as follows:-

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

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

Certified that all the provisions of R.P. 4 (c)(d)(e) and (f) have been complied with. Taken down by me in the presence and hearing of the accused this 24 day of July 1946, in the Field.

E C Peckham Major

(E.C. Peckham)Major
Officer detailed to take
Summary of Evidence.

Exhibit "A" of 6

PART II ORDER EXTRACT FORM

To:

99/20/.....

.....19.....

EXTRACTS FROM: UNIT 2/12 CDN FD REGT RCA CAOF

Part II Order No. 23 dated 27 APR 46

ABSENT WITHOUT LEAVE

AWL from 1200 hrs 2 APR 46 Still absent 1200 hrs 24 APR 46
(22nd Day)

L84565 GNR FELLOWS L F

The following documents are { attached. Please acknowledge receipt on attached duplicate. / required. Please forward same

Certified to be a true extract from the regimental books and documents in my custody.

Originating Clerk's Initials .....

Officer IC Records
2 Ech. HQ.

.....for
Officer in Charge
Canadian Section, GHQ, 2nd Echelon

1/70 ECR—2
10 Pads 1276 (6764)

Exhibit "B" E.P. Canada

"CERTIFICATE UNDER THE ARMY ACT, SECTION 163(1)(J)

I, D-11652 Sgt. CONROY, R.D. .....certify that

Reg. No. L-84965 Rank....GNR....Name...FELLOWS, L.F.....

REGIMENT..X-4 list 3 Cdn Transit Camp.....

UNIT.....

STATIONED AT...Alverna, Holland.....

Surrendered himself to No..D-11652...Rank..Sgt.Name.CONROY,R.D.

of the, The Hague Liaison Team, 11 Cdn. Spec..Pro..Sec..Cdn.Tps NWE

on the 16.July day of..July...1946, at.2100. hours.at Scheveningen

Holland..... AS AN ABSENTEE WITHOUT LEAVE.....

at the time of his surrender he was wearing (military uniform)

~~XXXXXXXXXXXXXXXXX~~

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

R.D. Conroy.
(R.D. CONROY, Sgt. D11652
NCO i/c Hague Liaison Team
11 Cdn Spec.Pro. Sec.
Cdn Tps. NWE

Attach

LIST OF WITNESSES

In the case of L-84565 Gnr. Leonard Francis FELLOWS.

(For the Prosecution)

NONE

(For the Defence)

NONE

LIST OF EXHIBITS

In the case of L-84565 Gnr. Leonard Francis FELLOWS.

(For the Prosecution)

"A" A certified true extract of 2/12 CDN FD REGT RCA CAOF Pt. II Order No 23 dated 27 April 1946, showing the accused absent from 1200 hrs 2 April 1946.

"B" A certificate of Surrender of the accused, at SCHEVENINGEN, Holland, at 2100 hrs 16 July 1946.

(For the Defence)

NONE

CERTIFICATE OF ACCUSED

I, L-84565 Gnr. Leonard Francis FELLOWS, hereby acknowledge that I have received, free of charge, one copy of the Summary of Evidence and one copy of the Charge Sheet therein.

I also request that an Officer be appointed to act as my Defending Officer at my forthcoming Court-Martial.

L F Fellows
(L.F. Fellows)

Exhibit B
Hack

In lieu of Army Form B.296(War).

STATEMENT AS TO CHARACTER AND PARTICULARS OF SERVICE OF ACCUSED

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

NUMBER	RANK	NAME	REGIMENT (or as the case may be
I-84565	GNR.	FELLOWS, L.F.	2 Cdn Discipline Unit(NWE)

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

For ..... Unknown .... Times

For ..... " .... Times

For ..... " .... Times

For ..... " .... Times

Date of first entry in Field Conduct Sheet ..... Unknown .....

Date of last entry in Field Conduct Sheet ..... " .....

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

[redacted]

4. The accused has been awaiting trial on the present charges for ..... NO. ..... days in civil custody; and for ..... 13 ..... days in military custody, i.e. ..... NO. ..... days in open arrest, ... 13 ..... days in close arrest; of which ..... NO. ..... days were spent in hospital.

5. The present age of the accused is ..... 24 yrs. .....

6. The date of his attestation is 13 Feb 42.

[redacted]

7. The service which the accused is allowed to reckon is .....

8. The accused is in possession of: 1939-45 Star, Italy Star, Fr&Germ Star, Defence Medal, CVSM&Clasp

The accused own statement:-

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

[redacted]

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

SCHEDULE OF CONVICTIONS BY A COURT-MARTIAL OR CIVIL COURT

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

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

Signed this 29 day of July 1946

E.C. Peckham Major

(E.C. Peckham) Major
Officer having custody
of Regimental Documents.

Exhibit C
Hack

No. L-84565 Name FELLOWS Leonard Francis | Sqn, Battery, or Company | Corps RCA Fd. | Date of enlistment 13 Feb 42 | CC Badges | Service or Proficiency Pay | 3/17 MFM 6 (AFB 122) 40/PAS/136 (5412)

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

Place	Date of offence	Rank	Cases of drunkenness	OFFENCE	Names of Witnesses	Punishment awarded	Date of award or of order dispensing with trial	By whom awarded	Remarks
				TEMPORARY SHEET (Location of original unknown)					

E C Peckham Major

(E.C. Peckham) Major
Officer having custody
of Regimental Documents.

(PTO)

St. ANTONIA ZIEKENHUIS
Walstraat 295 a
Terborg
Tel. 230 — Postrek. 233255

Crack

Terborg 6 VI 46

I declare, that the wife of Leonard must be operated.
The operation will take place Thursday 11 June 1946 in the clinic at Terborg.
It is better that the husband will stay present
Gynaecologist
Dr. Ir. van

Terborg 12/6/46
I declare, that Mrs Fellens' damage is again in good condition
Dr. H. Hart
Arts
Terborg

Hoer

ST. ANTONIA-STICHTING R.K. ZIEKENHUIS
Maastricht TERBORG

Gelegenheid om de patiënten te bezoeken, voor ALLE KLASSEN:

ZONDAGS, DINSDAGS, DONDERDAGS } van 3 tot 5 uur.

MAANDAGS, WOENSDAGS, VRIJDAGS } van 4 tot 5 uur, en van ½7 tot ½8 uur.

's Morgens en Zaterdags den geheelen dag wordt geen bezoek toegelaten; en ook niet buiten de vastgestelde bezoekuren.

Ook worden niet meer dan twee bezoekers tegelijk bij de(n) zelfde(n) patiënt toegelaten. Dit geldt voor alle klassen. Wanneer er dus bij een patiënt 2 bezoekers zijn, en voor die patiënt nog andere bezoekers komen, moeten deze wachten tot de eerste vertrokken zijn.

HET BESTUUR.

Druk: Fa. Lemmers en Zonen — Terborg

M L. VAN BREEMEN
ARTS

Telefoon 555965
Giro-nummer 269537.

SCHEVENINGEN (Den Haag) Hague
Stevinstraat 177 4/5 1946

Dear Sir,

Herewith I declare, that Mrs Fellows, travelling
Amsterdam to the Hague is sick and must stay in bed for
± 2 weeks. Perhaps it will necessary, that a gynae-
cology must be consulted, if the medicine and rest
will have no result and an operation perhaps will
be necessary. So it will be better, that her hus-
band will remain with her.

The house-doctor

Rekening No

St. Antonia Ziekenhuis - Terborg

Walstraat 295a

Telefoon 250

Postrekening 233255

Nota voor Mej. J. Fellows Helft"

voor verpleging van 4 Juni t/m 25 Juni à f 4.-

Datum Opname	Datum Vertrek	Aantal Verpleegdagen	Klasse	Tarief	Bedrag	Gebruik Operatiekamer Medicamenten, Foto- en andere kosten	Totaal
Juni 4	Juni 25	22	II	f 4.-	f 88.-		
					18.-	geb. operatiek.	
					106.-		
					40.-		
Juni 3 per betaald					f 66.-		f 66.10

Bemerkingen:

K 7292

P. H. VAN TERWISGA
ARTS - INTERNIST

SPREEKUREN
Ma · Di · Do · Vr 1—2 uur

PRINS HENDRIKSTRAAT 23
TELEFOON 326 · GIRO 77696

Doetinchem, 7 Juni 46.

Aan Mej. Tellow-Jansen.
Villaweg 6a.
Utrecht.

Nota

voor geneeskundige behandeling over

1e kwartaal 19 46.

f 10 =

Vermelding van het folio-no. wordt beleefd verzocht bij overmaking van dit bedrag.

Mej. Tellow-Jansen 10 =
folio 191
46.

ZIEKENHUIS „SINT JOZEF" - DOETINCHEM

TELEFOON 564 — POSTGIRO 170065

Rek. no. 563

Doetinchem, 26 Juni 19

Nota voor Mej, J.M. Feâloos,

Ulft Ettenschew. 661

	Zegel f	0	10
doorlichten	-f	5.	--



Mej. J. M. Felloos

Ettenschew. 661

Ulft.

Zickenheiligenstraat 107
Oc. HAARLEM
Dr. Huberdinandstraat 107

Den Haag. Juni 1946

Johan van Oldenbarneveldtlaan 79
Postcheque- en Girodienst no. 54855

Hadr.

Honorarium verschuldigd aan Dr A. M. Streef, vrouwenheelkundige ~~consult~~ behandeling in het jaar 1946 voor de echtelieden Fellows

fl 10.

H.Q.C. 55-F-853 CONFIDENTIAL

DEPARTMENT OF NATIONAL DEFENCE - OTTAWA, CANADA

CROSS REFERENCE

SUBJECT

DISTRICT COURT-MARTIAL

FEDORA, MICHAEL H-601312 PTE.

CONFIDENTIAL H.Q.C. 55-F-853

CENTRAL REGISTRY	DATE	R.C.A.F. OR R.C.N.	INITIALS	REFERRED TO	FOR REMARKS	INITIALS	DATE
	20/9/46			JAG	NEW FILE WITH PAPERS IN SEP 30 1946	CR	19-9-46
OCT 1 1946	2/10/46			JAG	To note concurrence		1/10/46
OCT 3 1946				JAG	RETURNED		
JAN 24 1947	23 Jan 47						

NOTICE

W.1-3-1 (J)

DEPARTMENT OF NATIONAL DEFENCE
- Army -

Winnipeg, Manitoba,
26th September, 1946.

CENTRAL REGISTRY Army
CONF. SEC.
40653
SEP 28 1946
File 8-55-34-853
Chgd. to
Referred to Admin

The Secretary,
Department of National Defence (Army),
OTTAWA, Ont.

REMISSION OF SENTENCE
SUS No. 10 District Depot, C.A.

Herewith, for custody, is Form of Remission of Sentence, together with M.F.M. 288, relative to the under-noted OR, duly completed in accordence with C.A.R.O. 3974:

H.1458	Pte.	AHOLA, H.	H.540252	Pte.	ANNALA, N.O.
H.530925	Fus.	ANTONOWSKY, N.	H.600251	Pte.	ARTINOVICH, M.
H.26217	Pte.	BELANGER, M.	H.600455	Pte.	BESKAU, E.H.
H.63048	Pte.	BLOCK, P.	L.609312	Pte.	BLOOMQUIST, O.
H.601507	Pte.	BOILY, L.	H.602472	Pte.	BOITSON, M.
H.22942	Pte.	BOURDERLIQUE, C.	H.615226	Pte.	BOURGEOIS, A.J.F.
H.601581	Pte.	BOYECHKO, N.	H.43223	Spr.	CADOTTE, R.
H.94708	Pte.	CARLSON, J.C.	H.601829	Pte.	CHAMBERS, M.
H.616559	Pte.	CHERNESKY, E.	L.465711	Rfn.	CHERPIN, J.
H.31862	Pte.	CHORNOBOY, M.	H.10327	Pte.	CHUBLY, H.
L.155667	Pte.	CLEAVELEY, W.H.	H.616740	Gnr.	COLTON, M.
L.2744	Gnr.	CROSSEN, E.E.	H.511011	Pte.	CURE, J.R.
H.602427	Pte.	CYMBALISTY, J.	H.617392	Pte.	DESHKO, W.
D.114715	Pte.	DICKSON, J.A.	H.615285	Pte.	EILMES, J.
H.530035	Tpr.	EWCHUK, P.	H.614448	Gnr.	FEDKIW, C.
H.601312	Pte.	FEDORA, M.	H.43081	Pte.	FISHBOOK, T.
H.616910	Pte.	FIOLA, S.	H.510981	Pte.	FOURNIER, G.
H.614395	Spr.	FRIEDOFF, F.E.	L.607351	Fus.	FRIESS, M.
H.616130	Gnr.	FRYKAS, J.	H.615102	Pte.	GAUTHIER, E.J.
H.614869	Pte.	GERARDY, J.J.	H.21084	Pte.	GOMIEN, J.
H.530724	Gnr.	GOSHULAK, T.	H.105159	Pte.	HLNISCHUK, H.A.
H.615395	Pte.	HAYEK, G.	H.617699	Pte.	HAYKA, J.
K.18772	Tpr.	HILLE, J.E.	H.605504	Gnr.	HNINCHUK, A.
H.617677	Gnr.	JACOBSON, G.O.	H.510380	Pte.	JANLOZKO, H.A.
H.615133	Pte.	JUIS, D.	L.603066	Pte.	KARCHUT, S.
H.610108	Pte.	KAZINA, M.N.	H.601031	Pte.	KIHN, L.
H.617354	Pte.	KINAL, W.	H.601382	Gnr.	KOKORUDZ, M.
H.605170	Pte.	KORPI, M.S.	H.602030	Rfn.	KOSARCHUK, N.
H.616330	Pte.	KOWALCHUK, J.	H.602326	Fus.	KRAWCHUK, J.
H.103697	Pte.	KRAYNYK, P.	L.601141	Pte.	KRYVOBLOCKI, G.
H.530858	Rfn.	KUCHMA, P.	L.601031	Fus.	KUITUHIN, E.A.
K.605798	Pte.	KURYLOWICH, M.	L.603920	Fus.	LANG, K.
H.9730	Pte.	LAPLANTE, R.	H.617083	Pte.	LASUITA, A.
H.615831	Pte.	LASUITA, P.	L.611288	Spr.	LAWRICK, S.G.
H.43184	Rfn.	LEDUCHOWSKI, W.	H.100040	Gnr.	LEFEBVRE, J.A.
H.616973	Pte.	LEFKO, F.	M.2485	Pte.	LESAGE, A.
H.617909	Pte.	LENKO, E.	H.601794	Pte.	LOZINSKI, M.
H.614403	Rfn.	LYCHOWIT, J.	H.1691	Pte.	MARAZ, W.
H.22476	Pte.	MARCOUX, B.J.	H.615089	Pte.	MARKUS, N.S.
M.204648	Pte.	MATENICK, S.	H.617326	Pte.	MAZUR, J.
H.616086	Fus.	MELQUIST, A.W.	H.614646	Pte.	MICHASIW, B.
L.608180	Pte.	MILLER, H.A.	H.606153	Pte.	NIOR, D.
H.605638	Pte.	MORGAN, W.E.	H.610116	Rfn.	MOROZ, E.
H.615571	Gnr.	MOROZ, P.	H.10289	Pte.	MUDREY, J.
H.601700	Pte.	MUDRIY, S.	L.31	Gnr.	MURASH, J.
H.500980	Pte.	NADRICHNY, P.	H.614659	Rfn.	NAKONECZNY, B.
L.466085	Pte.	NIETZ, E.	H.615304	Pte.	PARISIAN, R.
H.14020	Gnr.	PETRASH, D.R.	H.610110	Pte.	PLAZIO, J.
H.600572	Pte.	PUSHKA, J.	L.611164	Gnr.	RATZLAFF, H.
H.606245	Pte.	QUINTZ, J.R.	H.14941	Pte.	REPO, P.E.
[illegible]	Pte.	ROBOSH, N.S.	L.601720	Pte.	ROLNUS, R.

L.610499	Tpr.	ROMANUIK, N.	H.31535	Pte.	ROMAS, S.
H.614252	Tpr.	SANCHUK, H.	H.521285	Pte.	SCHICK, R.G.W.
H.103135	Pte.	SCHMIDT, W.	H.613490	Tpr.	SEMCHUK, N.
H.601706	Pte.	SERNIUK, N.	H.615486	Pte.	SHEWCHUK, W.
H.617739	Pte.	SHEWCHUK, W.	H.18301	Pte.	SHYMKO, N.
H.617293	Pte.	SKRYBA, W.	H.511416	Pte.	SOKAL, H.
H.614522	Pte.	SOWA, A.	H.616694	Pte.	STADNYK, A.
H.613898	Rfn.	STELMACH, M.	M.36430	Spr.	SWANSON, W.J.
H.618045	Pte.	SZKLARUK, N.	H.43093	Pte.	TARASCHUK, M.
H.615006	Fus.	TASHEKOWSKY, P.	L.608959	Pte.	THEISEN, J.P.
H.600418	Pte.	TKACHUK, W.	H.18039	Tpr.	TURICK, S.
H.613826	Pte.	TURKITCH, J.	H.610158	Pte.	TYMOFICHUK, M.
H.23193	Pte.	UNRAU, C.	H.616726	Gnr.	URBANOWSKI, F.
L.601004	Pte.	WEIERS, H.F.	H.28345	Pte.	WHITE, F.
H.616600	Pte.	WITKOWSKI, J.	H.614926	Pte.	WOLCHUK, S.
H.615824	Pte.	WYLYCHENKO, M.	H.540700	Pte.	ZABLOTNY, M.
H.616867	Pte.	ZAWATSKI, M.	H.616532	Rfn.	ZELISKO, F.

E C Morton Major

(R.O.C.Morton) Brigadier,
District Officer Commanding,
Military District No. 10.

APPENDIX "C" TO C.M.R.O. No. 5913

FORM FOR REMISSION, COMMUTATION, MITIGATION, SUSPENSION OR PUTTING INTO EXECUTION OF SENTENCE AWARDED BY CsM

NDHQ File No. HQC.....
District File No. HQ/H.601321

PART I

No. H. ~~601321~~ 601312 Rank Pte. Name Michael FEDORA

Unit..... No. 10 District Depot

PART II

Date of Trial...21 August 1946.....
Charge ...Desertion.....
Sentence ...Three (3) months Imprisonment with hard labour & DD
Date of Sentence.21 August 1946.....
Confirmation (a) Authority...D.O.C., M.D. 10.....
(b) Date ...2 Sept. 46.....

PART III

REMISSION

I, the undersigned, being the competent Military Authority under Section 57 (2) of the Army Act (superior Military Authority under Section 57A of the Army Act), do hereby remit (~~commute~~) (~~mitigate~~) (~~suspend~~) (~~put into execution~~) the balance of the sentence of Three (3) Months imprisonment with hard labour, eff 18th September 1946.

Signed at Winnipeg, MAN. THIS 16thday of September, 1946.

.....
(R.C.C. Morton) Brigadier, D.O.C. M.D. 10.
(To be signed by the competent authority or Superior Military Authority personally)

PART IV

PROMULGATION

Remission (~~commutation~~) (~~mitigation~~) (~~suspension~~) (~~putting into execution~~) promulgated and extracts taken at Winnipeg, Manitoba, this 18th day of September, 1946. (1)

.....Capt.....
Officer i/c Documents
No. 10 District Depot

(1) Unit, attachment and appointment to be stated.

PART V

CERTIFIED TRUE EXTRACT OF DAILY ORDERS PART II

No. H. ~~601321~~ 601312 ....Rank. Pte. .....Name. Michael FEDORA.....

The sentence of...Three (3) months Imprisonment with hard labour, awarded by ~~District~~ (Standing) Court-Martial on the...21 August..... 1946 has been remitted effective the 18thday of September 1946 on the 16 day of Sept. 1946, by Brigadier R.C.C. Morton, D.C.C. M.D.10

Unit No. 10 District Depot.....

Certified true Extract of Daily Order Part II No. 219 para 19(a) dated 18 Sep 46.

Place Winnipeg, Manit. Date 18 Sep 46.

Adjutant.....
No. 10 District Depot

REVIEW OF SENTENCES AWARDED BY COURTS-MARTIAL

PART I

Case of H-601321 (Number) Private (Rank) Michael FEDORA (Name in full)

No. 10 District Depot, C.A. (Unit, etc.)

Sentenced to be imprisoned with hard labour for 3 months and to be discharged with ignominy from His Majesty's Service and to be put under stoppages of pay until he has made good the sum of $5.16 in respect to the cost of appreh. and return to Unit.

on 21 August, 1946 at Winnipeg, Man.

being served at Headingly Gaol, Headingly, Man. (Name of Military Detention Barracks or Civil Prison)

Age on, and date of, enlistment 21 years, 9 months - 8 September, 1941.

Medical grade or category "A"

FIRST TRIAL—PART II

To ..... (Superior Military Authority)

For details of offences see Part VII.

I have directed that the above-named be (not) committed to undergo his sentence, which I recommend should (not) be (suspended) (put into execution) (reviewed on ..... (date)) for reasons given in paragraph X.

Place .....

..... (Confirming Authority)

Date .....

PART III

For C.O.'s remarks, see Part IX.

I direct that the sentence (which I hereby commute to .....)

(of which I remit .....) (be suspended) (be put into execution)

(and) be reviewed on .....

Place .....

..... (Superior Military Authority)

Date .....

(For action on review, see Part VI)

SECOND TRIAL—PART IV

To ..... (Superior Military Authority)

For details of offences, see para. VIII. For C.O.'s remarks, see para. XII.

This man was again convicted on ..... and sentenced

to ....., and I have directed that he shall (not) be committed to undergo his sentence, which I recommend should (not) be (suspended) (put into execution) and run (concurrently) (consecutively) with the previous sentence for the reasons given in paragraph XIII.

Place .....

..... (Confirming Authority)

Date .....

M.F.M. 203
(Army Form A-2106)
M.M. 6-42 (1250)
H.Q. 1775-39-2015

19

PART V

I direct that the sentence (which I hereby commute to .....)

(of which I remit .....) (be suspended) (be put into execution)

and that it run (concurrently) (consecutively) with the previous sentence of .....

..... (and) be reviewed on .....

Place .....

Superior Military Authority

Date .....

PART VI

ACTION ON REVIEW

All recommendations, etc., considered upon review, should be noted here.

Date	Directions	Signature and appointment of Authority giving the directions	If sentence suspended, actual date of release and marks earned to count towards remission and signature of Governor of Civil Prison or O.C. Military Detention Barracks
16 Sep 46	Sentence to be remitted eff. 18th September 1946.	R O Gillerton (R.O.G. Morton) Brigadier, District Officer Commanding, Military District No.10.	

PART VII—FIRST TRIAL

Charge or Charges giving Particulars	Date of Offence	Date of Trial
CHARGE: Sec.12(1)(a) Army Act. WHEN ON ACTIVE SERVICE DESERTING HIS MAJESTY'S SERVICE, in that he, at Camp Borden, Ont., at 2045 hrs. on 2 June 42, absented himself from the A-22, R.C.A.M.C., T.C., C.A., until he was apprehd. by the Mil. Auth., at 1530 hrs. on 7 Aug 46, at Arborg, Man., wearing Military Uniform. Cost of Apprehn. & Return to Unit: $5.16.	2 Jun 42	21 Aug 46

A. Thomson Lieut. Colonel

Signature of Officer making entry

(A. Thomson)
Commanding Officer,
No. 10 District Depot, C.A.

PART VIII—SECOND TRIAL

Charge or Charges giving Particulars	Date of Offence	Date of Trial

Signature of Officer making entry

PART IX

C.O.'s REMARKS AND RECOMMENDATIONS ON FIRST TRIAL

Date	—	Signature
9 Sept. 46	There has been no opportunity to assess this man as to his ability, character, or usefulness as a soldier.	A Thomson (A. Thomson) Lt. Col. Commanding Officer, No. 10 D.D., C.A.

PART X

CONFIRMING OFFICER'S REMARKS AND RECOMMENDATIONS ON FIRST TRIAL

Date	—	Signature

PART XI

SPACE FOR FURTHER REVIEW

Date	Directions	Signature and appointment of Authority giving the directions	If sentence suspended, actual date of release and marks earned to count towards remission and signature of Governor of Civil Prison or O.C. Military Detention Barracks

H.Q.C. 55-F-853 (JAG/D)

OFFICE OF THE JUDGE ADVOCATE GENERAL

29 Sep 46.

District Officer Commanding,
Military District No. 10,
WINNIPEG, Manitoba.

H.601312 - Pte. FEDORA, M.,
No. 10 D.D., C.A.

Receipt is acknowledged of your 10/H.601312 (J), dated 13 September, 1946, under cover of which you forwarded, for registration and custody, the proceedings of the m/n District Court-Martial.

2. As the proceedings would appear to be in order, the Finding supported by the evidence and the Sentence legal, they are being retained for custody.

(R.F. Orde) Brigadier,
Judge Advocate General.

/CG

17

10/H.601312 (J)

DEPARTMENT OF NATIONAL DEFENCE
ARMY

Winnipeg, Manitoba.
13th September, 1946.

CENTRAL REGISTRY Army
CONF. & S.C.
SEP 19 1946
File C55-F-853
Chgd. to
Referred to

The Secretary,
Department of National Defence (Army),
OTTAWA, Ontario.

DISTRICT COURT-MARTIAL
No. H.601312, Pte. FEDORA, M.,
No. 10 District Depot, C.A.

Herewith, for registration and custody, are the proceedings of the marginally-noted District Court-Martial.

(R.O.G. Morton) Brigadier,
District Officer Commanding,
Military District No. 10.

encs.

45964

NRMA

H.Q.C.55-F-353
M.D. 10/H.601312

THIS COPY FOR

MEMORANDUM - DISTRICT COURT-MARTIAL

No. H.601312 Name FEDORA, M.

Rank Pte. Unit No. 10 D.D., C.A.

Charge A.A. 12(1)(a) DESERTION

Date of Crime 2-6-42

Date of Arrest 7-8-46 Charge Signed 16-8-46

Orders for D.C.M. A.A. & Q.M.G., M.D. 10 for D.O.C., M.D. No. 10

Place and Date of Trial Minto Armouries, Winnipeg, Man. 17-8-46

Sentence 20 mos imp WHL & be discharged with ignominy & stoppages of $5.16 cost of apprehension & return to Unit. Confirming authority mitigates 17 mos imp with hard labour.

Date of Confirmation 5-9-46

Date of Promulgation 4-9-46

Balance of sentence remitted by Conf. Auth. 18-9-46

Entered in Records of J.A.G. as No. 45964

Date 20-9-46

MEMO Guilty but confirming authority mitigates 17 mos imp with hard labour

M.D. 10
Absent
4 yrs 2 mos

No. 10 D.D.
Sentence
20 mos Imp WHL & be discharged with ignominy

16

for Judge Advocate-General

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

A

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

Proceedings of a District Court-Martial held at Minto Armouries, Winnipeg, Manitoba on the 21st day of August 1946 by order of Brigadier R.O.G. Morton, District Officer Commanding Military District No. 10 dated the 17th day of August 1946.

President.

Major R.B. CODE, M.C., M.M.
No. 10 District Depot, C.A.

Members.

Captain W.P. VINCENT,
No. 10 District Depot, C.A.

Captain D.N. OSBORNE,
Prairie Command.

~~, Judge Advocate~~

Trial of* No. H-601312 Private Michael FEDORA, No. 10 District Depot, C.A.

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

~~The Court satisfy themselves that the Judge Advocate is not available, and that the Deputy Judge Advocate is not available, and that the Deputy Judge Advocate is not available, and that the Deputy

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

~~The following officers under instruction having been duly detailed as duly sworn~~

Q.2 Do you object to No. SH-46589 SM (A/WOI) E.E. Duffy, District Headquarters, Military District No. 10 acting as Shorthand Writer?

A.2 No, sir.
No. SH-46589 SM (A/WOI) E.E. Duffy, District Headquarters, Military District No. 10 is duly sworn as Shorthand Writer.

Charge-Sheet

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

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

For Minute of Adjournment and Reassembly see document marked "C" attached.

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

Q.3 Is that your number, rank, name and unit? *Question to the accused.*

A.3 Yes, sir. *Answer.*

Q.4 Are you guilty or not guilty of the ~~first~~ charge against you, which you have heard read? *Question to the accused.*

A.4 Guilty, sir. *Answer.*

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

Answer.

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

Answer.

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

Answer.

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

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

B-2

CHARGE SHEET

The accused No. M-601 312 Private Michael FEDORA, No. 10 District Depot, C.A., an N.R.M.A., soldier of the Canadian Army placed on Active Service is charged with:

CHARGE
Sec. 12(1)(a)
ARMY ACT

WHEN ON ACTIVE SERVICE DESERTING HIS MAJESTY'S SERVICE

- in that he -

at Camp Borden, Ontario, at 2045 hours on the 2nd day of June, 1942, absented himself from the A-22 Royal Canadian Army Medical Corps, Training Centre, C.A., until he was apprehended by Military Authorities at 1530 hours on the 7th day of August, 1946, at Arborg, Manitoba, wearing Military Uniform.
Cost of apprehension and return to Unit $5.16.

A. Thomson Lieut. Colonel
(A. Thomson) Officer Commanding
No. 10 District Depot, C.A.

Winnipeg, Manitoba
16 August, 1946.

TO BE TRIED BY DISTRICT COURT-MARTIAL.

(R.O.C.Morton) Brigadier,
District Officer Commanding,
Military District No. 10.

Winnipeg, Manitoba
17 Aug 46.

14

(This page to be removed from proceedings when plea to all charges is Not Guilty.)

CC

Proceedings on Plea of Guilty

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

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

The accused No. H-601312 Private Michael FEDORA, No. 10 District Depot, C.A.
is found guilty of the charge.

*The summary of evidence is read, marked " H "

signed by the President, and attached to the proceedings.

Question to the accused. Q.5 Do you wish to make any statement in mitigation of punishment?

Answer. A.5 The accused in mitigation of punishment says

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

By the Accused: I have also a letter from the MacCharles Surgical Clinic dated the 13th of January, 1946 with reference to my father's health and letter from the Winnipeg Clinic with reference to my mother's health, dated 16th of August, 1946.

Letter from MacCharles Surgical Clinic dated 13 Jan 46 reference Mr. Nick Fedora is read, marked " J ", signed by the President and attached to the Proceedings.

Letter from Winnipeg Clinic dated 16 AUG 46 reference Mrs. N. Fedora is read, marked " K ", signed by the President and attached to the Proceedings.

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

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

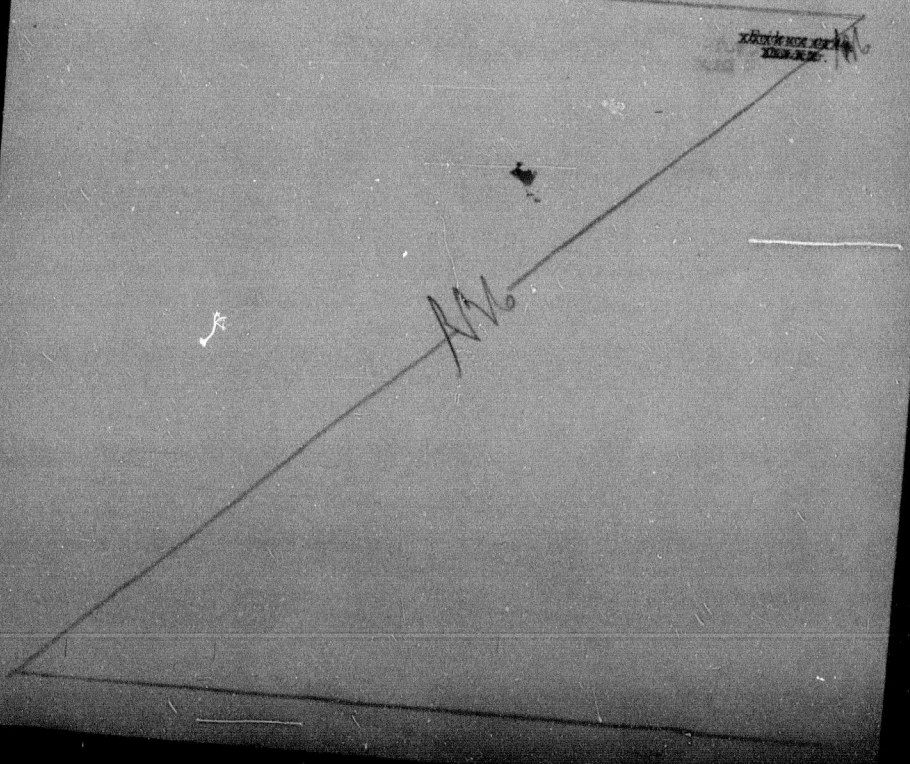
13

Q.6 Do you wish to give evidence yourself or to call any witnesses as to character?

Question to the accused.

A.6 No, sir.

Answer.



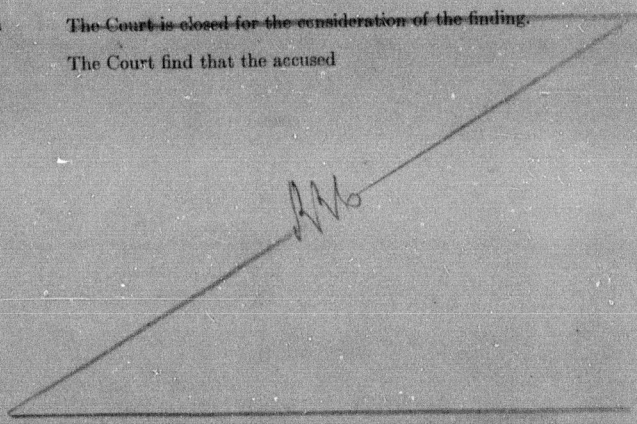
E

Finding*

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

~~The Court is closed for the consideration of the finding.~~

The Court find that the accused



Proceedings on Conviction *before Sentence*

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

~~*The Court being cleared, the accused is again brought before the~~

Evidence of character, etc. Major N.S. Bergman, No. 10 District Depot, C. is duly sworn.

Question by the President. Q.7 Have you any evidence to produce as to the character and particulars of service of the accused? *Answer by the Witness.* A.7 Yes, sir, I produce M.F.B. 355 and M.F.M. 6 relating to the accused.

The above statements with the schedule of convictions and of cases in which trial has been dispensed with are read, marked Y & Z, signed by the President, and annexed to the proceedings.

Question by the President. Q.8 Is the accused the person named in the statement which you have heard read? *Answer by the Witness.* A.8 He is sir.

Question. Q.9 Have you compared the contents of the above statement with the regimental books? *Answer.* A.9 I have sir.

Question. Q.10 Are they true extracts from the regimental books, and is the statement of entries in the conduct sheets a fair and true summary of those entries?

A.10 *Answer.* They are sir.

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

~~Cross-examined by the Defending Officer (accused) (Counsel for the accused).~~ The Counsel declines to cross-examine.

The Witness resumes his seat.

Question to the accused. Q.11 Do you wish to address the Court?

Answer. A.11 No, sir.

The Counsel speaks on behalf of the accused. See Page "L" attached.

The Court is closed for the consideration of the sentence. "The sentence to be awarded by the Court, being subject to confirmation will not be announced, but will be promulgated later and the proceedings in Open Court are accordingly terminated.

F

Sentence

The Court sentence the accused No.H-601312 Private Michael FEDORA, No. 10 District Depot, C.A., to be imprisoned with hard labour for twenty (20) months, to be discharged with ignominy from His Majesty's Service, and to be put under stoppages of pay until he has made good the sum of $5.16 in respect to the cost of apprehension and return to unit.

Sentence. 20 months imprisonment with hard labour and discharge with ignominy from His Majesty's Service.

Stoppages: $5.16

President, Major
District Court-Martial.

CONFIRMATION

I confirm the finding and sentence of the Court but mitigate seventeen (17) months imprisonment with hard labour.

Signed at Winnipeg, Manitoba, this 5th day of September 1946.

R. O. S. Morton
(R.O.S. Morton) Brigadier,
District Officer Commanding,
Military District No. 10

PROMULGATION

Promulgated and Extracts taken at Winnipeg, Manitoba this 9th day of September 1946.

Officer i/c Documents,
No. 10 District Depot, C.A.,
Winnipeg, Manitoba.

+ N McDermaid President DCM

Orders by Brigadier R.O.G. Morton, District/Officer Commanding

Military District No. 10.

District Court-Martial

17th August 1946

The detail of Officers as mentioned below will assemble at Minto Armouries, Winnipeg, Manitoba on Wednesday the 21st day of August 1946 at 1000 hours for the purpose of trying by a District Court-Martial the accused (persons) named in the margin (and such other person or persons as may be brought before them).

No.H-617831 Private Peter EWASIUK, No. 10 District Depot,C.A.
No. H-615486 Private Walter SHEWCHUK, No. 10 District Depot,C.A.
No. H-31637 Private Peter GRABOWIECKI, No. 10 District Depot,C.A.
No. H-601312 Private Michael FEDORA, No. 10 District Depot,C.A.
No. H-616409 Private Raymond Roy MARCHUK, No. 10 District Depot,C.A.
No. H-617739 Private William SHEWCHUK, No. 10 District Depot,C.A.

PRESIDENT

Major R.B.CODE,MC,MM appointed President
No. 10 District Depot,C.A.

MEMBERS

Captain W.P. VINCENT,
No.10 District Depot,C.A.
Captain D.N. OSBORNE,
Prairie Command.

WAITING MEMBERS

Captain D.W.R. DODGE,
No. 10 District Depot,C.A.

PROSECUTOR

Major N.S. BERGMAN,
No. 10 District Depot,C.A.
Prosecutor.

has been appointed

DEFENDING OFFICER

Mr. S.M. Cherniak,
Counsel

has been appointed

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

The Officer Commanding, No. 10 District Depot,C.A. will arrange for the necessary accommodation, stationery, court orderly, escort, shorthand writers, and interpreters, and will detail, as may be convenient two officers to attend for instruction.

The proceedings will be forwarded to A.A.& Q.M.G., M.D. No. 10.

Signed this 17th day of August 1946

M.F.S. 220
A.F.A. 47
HQ 1772-10-264

(R.O.G. Morton) Brigadier,
District Officer Commanding
Military District No. 10

"G"

MINUTE OF ADJOURNMENT AND REASSEMBLY

At 1000 hours on the 21st day of August, 1946, the Court adjourned until 1145 hours on the 21st day of August, 1946.

On the 21st day of August, 1946, at 1145 hours the Court reassembled pursuatn to adjournment, present the same members as when adjourned.

1946

10

SUMMARY OF EVIDENCE

in the case of

No. H-601312 Private Mike FEDORA, No. 10 District Depot, C.A., an N.R.M.A soldier of the Canadian Army, placed on Active Service.

Charge:

1. Desertion.

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

First Witness. Captain J. G. Douglas, Legal Officer No. 10 District Depot, C.A., having been duly sworn, states:-

"I am Captain J. G. Douglas, Legal Officer No. 10 District Depot, C.A., and I recognize No. H-601312, Pte. Mike FEDORA, the accused.

I produce M.F.B. 375 relating to the accused.

(M.F.B. 375 read, marked "A", and attached to the Proceedings)

I produce M.F.M. 216 relating to the accused.

(M.F.M. 216 read, marked "B", and attached to the Proceedings)

I produce M.F.B. 1481 relating to the accused.

M.F.B. 1481 read, marked "C", and attached to the Proceedings)

The accused declined to cross-examine.

J.G. Douglas Captain.
(J.G. Douglas)

Question to the Accused:

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

Answer by Accused:

I have nothing to say.

I certify that Rules of Procedure 4 (C), (D) (E) and (F) have been complied with.

Taken down by me in the presence of the accused at Fort Osborne Barracks, Winnipeg, Manitoba, this 15th day of August, 1946.

N.S. Bergman Major.
(N.S.Bergman)
No. 10 District Depot, C.A.,
Officer detailed to take this
Summary of Evidence.

9

I

Woodlands Pheasant DCM

August 21st, 1946.

STATEMENT OF MIKE FEDORA, No. H-601312.

I was enrolled in the Canadian Army at Portage La Prairie on the twenty-eighth of August, 1941. At the time I was enrolled I was the only active worker on my father's farm and that fall, due to my absence, the entire crop on the farm was lost. In the spring of 1942 I applied for Farm Leave, but after much delay and after the completion of several forms, I was not given a definite answer. On several occasions I spoke to my Sergeant but he told me it would take time. I proceeded at the end of May, 1942, and when on leave I wrote to my Commanding Officer on two occasions requesting an extension of time or the granting of Farm Leave. I received no reply, and as I felt it impossible to leave my parents alone on the farm without my help, I stayed with them. I remained on the farm from that time until the seventh of August, 1946, and during that time was the only active worker on the farm. I added to our income during the winter, and whenever I could be spared, by working in the bush.

I have one brother and three sisters, but all are married and are away from home and do not contribute to my parents' support in any way. Our farm consists of 360 acres, of which 80 are under cultivation, and the rest are used for hay, pasture and bushland. We have 11 head of cattle, 3 horses, 6 pigs and about 150 chickens, and all our machinery is horse-drawn.

My father, Nick, is sixty years of age and is unfit for heavy work, being under Doctor's care with some type of abdominal trouble. My mother, Catharine, is fifty-eight years of age and is under Doctor's care, suffering from Disbetes, High Blood Pressure and Hardening of the Arteries. She is of practically no use for farm work and does nothing other than the ordinary housekeeping and cooking at the house. I am, therefore, the only one able to manage the farm, as I do all the necessary work thereon.

8

M. Fedora

J

M. [redacted] MacCHARLES,
C.M., F.R.C.S. (EDIN.) AND (CAN.)
R. W. MacCHARLES, M.D.
C. W. CLARK,
M.D., C.M., F.R.C.S. (EDIN.)
E. S. JAMES,
M.D., F.R.C.S. (ENG.)
J. [redacted] NIE,
F.R.C.S. (EDIN.)

MacCHARLES SURGICAL CLINIC

216-220 MEDICAL ARTS BUILDING
WINNIPEG

Abbotsmuir
Crescent DCM.

17

13.1.46.

Re. Mr. Nick Fedora.
Arborg Man.

This is to certify ~~that~~ the above has been under my care since Nov. 13. 1945 suffering from Gastric dyspepsia. He was put on a diet and is much improved but still complains of some abdominal distress.

E.S. James.

K

19

DIVISION OF SURGERY
GENERAL SURGERY
Dr. P. H. T. Thorlakson
Dr. K. R. Trueman
Dr. J. E. Isaac
ORTHOPEDIC SURGERY
Dr. G. H. Ryan
THORACIC SURGERY
Dr. M. B. Perrin
UROLOGY
Dr. N. D. Morse
Dr. C. B. Stewart
CONSULTANT
Dr. Neil John MacLean

WINNIPEG CLINIC

Mackenzie
President DCM

ST. MARY'S AND VAUGHAN
WINNIPEG, MANITOBA

August 16th, 1946

26620

Mr. J.A. Cherniak,
Cherniack and Cherniack,
460 Main Street,
Winnipeg, Man.

Dear Sir:

re Mrs. N. Fedora, Arbourg, Manitoba

In accordance with your request regarding Mrs. Fedora, I am enclosing the following information.

Mrs. Fedora was a patient of the Clinic in May, 1946. At that time a diagnosis of high blood pressure, arteriosclerosis and diabetes was made.

Yours truly,

K. R. Trueman

K.R. Trueman, M.D.

KRT/RCS

7

M.F.B. 355
75M—5-43 (145)
H.Q. 1772-39-620
A.F.B. 296

STATEMENT AS TO CHARACTER AND PARTICULARS OF SERVICE OF ACCUSED

Number	Rank	Name	Regiment (or unit)
H-601 312	Private	Michael FEDORA	No. 10 District Depot, C.A.

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

	Within last 12 months		Since enlistment or appointment	
For	Nil	times	Nil	times
For		times		times
For		times		times
For		times		times

Number of instances of gallantry or distinguished conduct Nil

or,

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

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

2. The accused has not been previously convicted

or,

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

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

or,

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

4. The accused has been in confinement awaiting trial on the present charges, for Nil days in civil custody, and 14 days in ~~Air Force~~ military custody, making a total of 14 days in custody, of which Nil days were spent in hospital.

5. The present age of the accused according to his ~~record of service is~~ enrolment ~~attestation~~ paper 26 years 9 months

6. The date of his ~~commission~~ specified in his ~~record of service is~~ enrolment ~~attestation~~ enrolment ~~attestation~~ paper 28 August, 1941

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

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

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

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

11. (In the case of an officer.) The accused holds in the Royal Canadian Air Force the rank of Permanent Force
.....dated....., and in his regiment (or corps) the rank of unit
.....dated.....

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

.....Date of promotion.
In the rank of.....years.
In the rank of.....years.
In the rank of.....years.

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

SCHEDULE

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

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

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

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

Signed this 21 st day of August, 1946 Captain
(D. H. T. Evans) A/Adjutant

The above statement (with the schedule of convictions and of cases in which trial has been dispensed with) is read, marked Exhibit No. 10 in the proceedings. signed by the president, and annexed to the proceedings.

No. 10 N.R.M.A. Clearing Depot

M.F.M. 6

Reg. No. H-601312 Name Fedora, M. Corps Date of enlistment or enrolment 28/8/41 Date of Birth

Signature O.C. Company, etc. E. Fletcher, Major
C.O. #4 Coy.

Sheet No. of *1. 2. 3. 4. 5

*Piece check mark against number of sheets in use

Place	Date of offence	Rank	Corps of unit, etc.	OFFENCE	Names of Witnesses	Punishment awarded	Date of award or order dispensing with trial	By whom awarded	Remarks
				CERTIFIED TRUE COPY:					
				(D.H.T. Evans) Capt.					
				(Signature of Officer having custody of original record)					
				No. 10 District Depot, C.A.					

M.F.M. 6—500M—6-41 (5390)
H.Q. 1773-99-1552

(P.T.O.)

L

COUNSEL'S STATEMENT IN
MITIGATION OF PUNISHMENT

Mr. President, you have before you the picture at present of this man and this farm. He is the only son on the farm, has been the only son since prior to enlistment in 1941. His parents are getting along in age. Evidence before you shows that the mother is very sickly and the father is no great help on the farm. At the time of his enrolment the crop was lost for that year. Since that time he felt that he was needed more at home, one crop had already been lost. I don't excuse him for being away but I do think it is more important to speak as to this man's future than to his past. At present, as you know, the crops on farms are ready for cutting. If he is not able to go back very soon the crop will again be lost to his parents and to the people all over the world who need it. I hope the sentence you give him will not make his parents suffer and the other people who are in need of the crop. There has been mentioned before, this amnesty, anyone who has not been apprehended or surrendered will be treated as never having been in the army. That is even more lenient than to be discharged with ignominy. I am suggesting to the Court that you have been shown the way by the Minister of Justice by the action taken in the granting of the amnesty. The main principle of punishment is to show others, to deter them from doing the same thing. But at this time it is not detering anyone but will be detrimental by punishing this man for what he did. If he is given a release his crop will be saved. He is the only man on the farm and with the shortage of help, if he is not released the harvest will be lost. I am suggesting to the Court in view of the fact that he is badly needed at home and in view of the fact of the Amnesty that justice would be attained by giving him a dishonourable discharge and he will be able to return to his crop. He has already spent 14 days in detention and it will be another ten days before the sentence will be promulgated. He is away at a time when he is needed most. I trust you will take these facts into consideration and give him a dishonourable discharge and send him to gaol for a brief period time so he will be able to get home in time to harvest his crop.

4

TRIAL OF: H-601 312 Private Michael FEDORA
No. 10 District Depot, C.A.

LIST OF WITNESSES FOR THE PROSECUTION

Captain J.G. Douglas, Legal Officer
No. 10 District Depot, C.A., Winnipeg, Manitoba.

LIST OF EXHIBITS

M.F.B. 375

M.F.M. 216

M.F.B. 1481

Captain
(D.H.T. Evans) A/Adjutant
No. 10 District Depot, C.A.

Winnipeg, Manitoba.
16 August, 1946

TRIAL OF: H-601312 Pte. Fedora, M.

No. 10 District Depot (CA)

I, H-601312 Pte. Fedora, M.
No. 10 District Depot (CA), ~~desire~~ do not desire an officer assigned to defend me at my trial by Court-Martial.

M. Fedora

DEFENCE: Cherniack & Cherniack, Barristers
Winnipeg, Manitoba.

Winnipeg, Manitoba,
15 Aug 1946

MEDICAL OFFICER'S REPORT

I certify that No. H-601312 Pte. Fedora, M.
of 10 District Depot, C.A. is in a Good state of health,
and fit to undergo Trial by Court martial.

J.M. O'Keefe Capt.
Medical Officer RCAMC
No. 10 District Depot, C.A.

Station Winnipeg, Man.

Date 21st August, 1946.

M. F. B. 246
50M—C.44 (5457)
H.Q. 1773-30-400

CONFIDENTIAL

H.Q.C. 55-F-854

CONFIDENTIAL

DEPARTMENT OF NATIONAL DEFENCE—OTTAWA, CANADA

CROSS REFERENCE

SUBJECT

FIELD GENERAL COURT-MARTIAL

FIELDS, NORMAN GEORGE VICTOR C-121731 PTE.

CENTRAL REGISTRY	DATE	P.A. OR D.F.	INITIALS	REFERRED TO	FOR REMARKS	INITIALS	DATE
					(If purpose for which referred cannot be accomplished on one line, add remarks by file and initial.) NEW FILE CR 13-11-46		
NOV 13 1946							
NOV 15 1946	16/11/46				To note & pc		20/11/46
DEC 4 1946	3 Dec 46						
					WITH PAPERS ON DEC 20 1946		
DEC 23 1946	24/12/46				Passed please		21/12/46
MAR 7 1947	5/3/47						
					WITH PAPERS ON MAR 5 1947		
MAR 24 1947	21/3/47				To note & return		24/3/47
APR 1 1947	1/4/47				WITH PAPERS ON APR 2 1947		

CONFIDENTIAL
H.Q.C. 55-F-854

HEADQUARTERS CENTRAL COMMAND

CC/C-121731(SLT)

Ortona Barracks,
Oakville, Ontario,

26 Mar 47.

CENTRAL COMMAND
CONF. SEC.
6706
MAR 29 1947
File 055-7-864
Class. to
Return to Admin

Army Headquarters,
OTTAWA, Ontario.

C.121731 Pte. Fields, N.G.V.

Further to this Headquarters above numbered letter dated 10 Mar 47, of which you received a copy.

2. Herewith A.F.A. 3104 together with completed form for remission of sentence concerning the marginally noted soldier whose sentence of one year detention was remitted on 20 Mar 47.

Director of Personnel
A.G.R.
MAR 28 1947
Ref. D.H.Q.
Cat.

MAR 29 '47 AM
RECEIVED
A.G.R. REGISTRY

P.L. Sauvé maj
for (C. Vokes)
Major-General
GOC Central Command

VI.—Action on Review.
(Whether the sentence or sentences are suspended or in execution.)

Any Reviewing Authority *under Section 57 of the Army Act* may under that Section mitigate, remit or commute a sentence which is in execution, and if the sentence as commuted or mitigated is penal servitude, imprisonment or detention, it will remain subject to the powers granted by Section 57A of the Army Act. A partial remission of a sentence in suspension is not legal.

Date	Directions	Signature and Appointment of Authority giving the directions	If sentence suspended, actual date of release and marks earned to count towards remission, and signature of O.C. Prison or Detention Barracks
	NO REMISSION. RETURN TO CANADA IN CUSTODY UNDER SENTENCE.	(J.C. Murchie) Lieutenant-General Chief of Staff Canadian Military Headquarters 25 Oct 46	
7 Mar 47	REMIT balance of sentence of detn effective 20 Mar 47.	(C. Vokes) Major General G.O.C., Central Command	

(Continued on page 4.)

All recommendations, etc., considered upon review, should be pasted here.

If further space required, an additional slip should be pasted here.

Charge or Charges giving particulars	Date of Offence	Date of Trial
VII.—First Trial.		
AA Sec 41 - A civil offence - stole 5 truck tyres.	15 Jul 46	21 Sep 46
AA Sec 41 - A civil offence - stole one 15-cwt vehicle.	15 Jul 46	
AA Sec 41 - A civil offence - stole one 60-cwt vehicle.	15 Jul 46	
Signature of Officer making entry.		
VIII.—Second Trial.		
Signature of Officer making entry.		

IX.—C.O.'s remarks and recommendations on First Trial.

Date		Signature

X.—Confirming Officer's remarks and recommendations on First Trial.

Date		Signature

Army Form A 3104.

REVIEW OF SENTENCES AWARDED BY COURT MARTIAL.

I.—Case of No. C 121731 Pte Fields, N.G.V. Unit 48 Cdn Gen Tpt Coy
Sentenced to one year detention on 21 Sep 46
Age on, and date of, enlistment 18 yrs 12 Jul 43 Term of service duration

FIRST TRIAL.

For details of offence, see paragraph VII.
For C.O.'s remarks, see paragraph IX.

II.—To .....
Superior Military Authority.

I have directed that the above-named be not committed to undergo his sentence, which I recommend should be (suspended) (put into execution) (1) for reasons given in paragraph X.

Place .....

Date .....
Confirming Authority.

III.—I direct that the sentence (which I hereby commute to .....) (of which I remit .....) (1) (2) (be suspended) (be put into execution) (1) and be reviewed on .....(3).

Place .....

Date .....
Superior Military Authority (4).

(For action on review, see paragraph VI.)

SECOND TRIAL.

For details of offence, see paragraph VIII.
For C.O.'s remarks, see paragraph XII.

IV.—(5) To .....
Superior Military Authority.

This man was again convicted on ..... and sentenced to .....
and I have directed that he shall not be committed to undergo his sentence, which I recommend should be (suspended) (put into execution) (1) and run (concurrently) (consecutively) (1) with the previous (6) sentence for the reasons given in paragraph XIII.

Place .....

Date .....
Confirming Authority.

V.—(5) I direct that the sentence (which I hereby commute to .....) (of which I remit .....) (1) (2) (be suspended) (be put into execution) and that it run (concurrently) (consecutively) (1) with the previous (6) sentence of ..... and be reviewed on .....(3).

Place .....

Date .....
Superior Military Authority (4).

(1) Erase words not required, and initial erasures.
(2) A sentence of penal servitude or imprisonment, combined with Discharge with Ignominy, cannot be suspended unless the Discharge with Ignominy is remitted.
(3) A suspended sentence must be reviewed at least once every three months, and a sentence put into execution should be reviewed in not more than six months.
(4) An order directing a sentence to be put into execution must be signed by the Superior Military Authority personally.
(5) This paragraph is to be left unused until required. If the man is convicted a third time, a fresh form, using only paragraphs IV and V, will be made out and attached to this form, and all further reviews will be on the attached form.
(6) A previous sentence of imprisonment or detention in a state of suspension is avoided by the award of a subsequent sentence of penal servitude.

(*30478) W.L.19510/0223 21,000 10/43 A.& E.W.Ltd. Gp.698 Forms/A.3104/15

FORM FOR REMISSION, COMMUTATION, MITIGATION, SUSPENSION OR PUTTING INTO EXECUTION OF A SENTENCE AWARDED BY CsM

PART I

No. C.121731 Rank Pte Name FIELDS N.G.V.
Unit 2 D.D.

PART II

Date of Trial 21 Sep 46 (FGCM)
Charges 3 Civilian Charges - Steeling - AA Sec 41.

Sentence 1 year detention
Date of Sentence 21 Sep 46
Confirmation - (a) Authority (b) Date

PART III

I, the undersigned, being the competent military authority under Section 57(2) of the Army Act (~~xxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxx~~)
do hereby remit (~~xxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxx~~) the balance of sentence of detention effective 20 Mar 47.

SIGNED AT OAKVILLE, Ontario, this 7th day of March, 1947.

(C. Vokes)
Major General
G.O.C., Central Command

PART IV

PROMULGATION

~~Remission~~ (~~xxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxx~~)
promulgated and extract taken at No 2 District Depot Long Branch Ont
this 17th day of March 1947.

Major
Officer I/C Documents
No 2 District Depot C A

(1) Unit, attachment and appointment to be stated.

PART V

CERTIFIED TRUE EXTRACT OF DAILY ORDER PART II

No C.121731 Rank Pte Name FIELDS, N.G.V.
The sentence of 1 year detention
awarded by FGCM Court-Martial on the 21 Sep 46
has been remitted by 184 days
on the 20th March 1947 by Maj Gen C Vokes GOC CC
Certified True Extract of Daily Order Part II of 17 Mar 47 (DO #64-16b) 17 Mar 47
Place No 2 DD Long Branch Ont. Date

Major
(Edmund O.King)
FOR O/C ~~XXXXXXX~~ D.D.

X Strike out and initial words not applicable

HEADQUARTERS CENTRAL COMMAND

CONF. SEC.
5760
MAR 15 1947
Filed
Dupl. to
Referred to

T.20-F-8601 (SL 2)

Ortona Barracks,
Oakville, Ontario.

10 Mar 47.

No. 2 District Depot,
LONG BRANCH, Ontario.

C-121731, Pte. Fields, M.G.V.

Herewith Form for Remission of Sentence together with Form L for release of C-121731, Pte. Fields, M.G.V. under sentence, release to be effective 20 Mar 47.

2. Complete Parts IV and V on the Form for Remission and return same to this Headquarters immediately Part II Orders are published.

3. This soldier will be discharged under CARO 1089 (5)(c)(i), and issued with transportation warrant to his home address.

MAR 18 1947 AM
APR 15
RECEIVED
A.G. REGISTRY

(M.A. Sparling) Brigadier,
Officer IC Administration,
Central Command.

Copy to: ~~12 Mil Det Sqn, Camp Borden, Ont.~~
" " Army Headquarters, Ottawa, Ont.

HEADQUARTERS MILITARY DISTRICT NO 2

File No: T.20-F-8601
(AQ)

122 Front St.W.,
Toronto, Ontario.

18 Dec 46

CENTRAL REGISTRY Army
CONF SEC
17088
DEC 20 1946
Referred to

Army Headquarters,
OTTAWA, Ontario.

C.121731 Pte. FIELDS, N.G.V.
SUS - No. 12 M.D.B.

1. The DOC has reviewed the sentence of the m/n soldier and directed that he serve one-half his sentence.

2. Provided his conduct remains good whilst in detention, the balance of his sentence will be remitted effective 20 Mar 47.

3. The proceedings of the FGCM are returned herewith.

for (H.A. Sparling)
Brigadier,
DOC, Military District No.2.

RECORDED AT CMHQ IN AB 160 CRO-2-77

RECEIVED SEP 30 1946 JAG BRANCH C.M.H.Q.

FIELD GENERAL COURT-MARTIAL

CPA96 (In lieu of AFA3) 40/P & S-1658 (2864)

Convened by Order of Lt-Col E R HEUCHAN OIC Con Sec HQ BAOR (MWE) dated 19 Sep 46

ACCUSED.

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

Number.	(a) Prmnt R. (b) Apptmt, A/R or A/Apptmt.	Full Christian Names.	Surname.	Unit.
C 121731	Pte	NORMAN GEORGE VICTOR	FIELDS	438 Con Coy RCASC

PROCEEDINGS REVIEWED

1 Nov 46 C.A. Tait Maj.

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

PROCEEDINGS OF TRIAL.

Held in the Fd in (*country*) HOLLAND on (*date(s)*) 21 SEP 46

RECORD FORM A—OPENING PROCEEDINGS AND ARRAIGNMENT.

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

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

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

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

A3. The Court is opened. The accused is (are) brought before the Court. At 1935 hours trial commences.

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

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

A5. President to accused: Do you object to N VAN BERGEN as interpreter? Ans No Sir.

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

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

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

Ans No Sir.(2)

(1. RP 110. 2. If no objection, waiting member retires. RP 68(8). If objection, see procedure AA 51, RP 25, 71, 18, MML p 742.)

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

President	MAJOR	H.A.C. ROSE	CIC	2 Con Disc Unit
Member	MAJOR	D.J. LEACH	CIC	Con Sec HQ BAOR
Member	CAPT.	R.C. LANE	RCAC	2 Con Mov Control Gp
Judge-Advocate	CAPT	R.M. MACLEOD	RCA	4 Inf Div "X" JAG(O)
Prosecutor	CAPT.	R.J. REREDOT	CIC	2 Con Disc Unit
Defending Offr	CAPT.	K.M. ROSE	CIC	2 Con Disc Unit

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

(1. RP 26, 27, 109, 111. List of offrs under instr will be returned separately with proceedings for information of Conv Offr.)
(2. If Pros a lawyer and Def Offr not, accused is entitled to an adjournment when RP 89 (8) and fn 2 were not followed. See DI 3.3.)

A8. The accused C 121731 Pte Fields, N.G.V. before arraignment make(s) (no) ~~no~~ plea

(1)

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

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

(1. RP 31, 112. See para 1 of Instrs p 2. When more than one Charge Sheet see RP 61; when several accused to be tried separately see RP 71(C), and use separate copies of CF A96 to record proceedings. 2. RP 32, RP 33. If otherwise, delete and make appropriate record per Notes.)

A10. The Court (is closed and) considers the Instrs on Procedure after Arraignment at top of p 2. The pro- ceed- ings are continued on Record Form C

PRESIDENT OR JA WILL INITIAL ALL DELETIONS AND ALTERATIONS.

INSTRUCTIONS ON PROCEDURE AFTER ARRAIGNMENT.

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

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

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

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

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

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

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

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

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

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

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

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

President to accused : Do you wish to make a statement ? Ans None (5)

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

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

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

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

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

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

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

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

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

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

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

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

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

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

PRESIDENT OR JA WILL INITIAL ALL DELETIONS AND ALTERATIONS.

Exhibit 2, Attack

No. C121731 Name FIELD N G V | Sqn, Battery, or Company | Corps CIC | Date of enlistment 12 Jul 40 | Badges | Service or Proficiency Pay N/A

3/17 MFM 6 (AFB 122) 40/PAS/136 (5412)

Date of last entry in Company Conduct Sheet: Nil | No. and date of last drunk: Nil | Period not reckoning towards freedom from extra fine: N/A | Sheet No 1 | Signature OC Company, etc: J N K Smeltzer Capt | Character

Place	Date of offence	Rank	Cases of drunkenness	OFFENCE	Names of Witnesses	Punishment awarded	Date of award or of order dispensing with trial	By whom awarded	Remarks
				Old sheet destroyed wef 12 Jan 44 J.W.K. SMELTZER CAPT					
Field	7 Feb 44	Gnr		AA(S) Insubordinate language I would rather be pegged than go to road block	Sgt Hooper Bdr Italiano	7 Dys C B 7 days pay Sec 46 AA	7 Feb 44	H Armstrong Major	
Field	3 Mar 44	Gnr		AA40: Neglect to the prej of good order etc negligently handling a rifle as to cause it to be discharged	Lt G R SPRAGUE L/Bdr Attwell Gnr Leduc GC	4 days CB	7 Mar 44	WD PIPE Capt	
Field	23 Feb	Gnr		AA 40 Conduct to the prej of good order etc removing or assisting to remove point 303 amn from RCOC amn stores	Gnr Moreland Gnr MacDonald Gnr Jackson	14 Days CB 14 dys pay	11 Mar 44	QB McCallum Lt Col	
Halifax NS Eklins Bks	31 Mar 44	Gnr		AA40 Neglect to the prej of good order & mil discipline	Sgt Woods A F40425	3 Dys CB	1 Apr 44	Lt J A E Lake	(PTO)

Place	Date of offence	Rank	Cases of drunkenness	OFFENCE	Names of Witnesses	Punishment awarded	Date of award or of order dispensing with trial	By whom awarded	Remarks
Elkins Brks	4 Apr	Gnr		(1)AA9(2) Disobeying a lawful command given by his superior offr (2) AA40 An act to the prej of good order & Mil discipline	Sgt Wood A F40425 L/Bdr Towriss RG	14 Dys detention	5 Apr 44	W R Smith Lt Col	
Aldershot NS	11 Jul	Pte		AA15(1)AWL from 2359 hrs 11Jul44 to 2359 hrs 12 Jul 44 (TTA 1 Day)	Cpl Lidstone	5 Dys CB 5 dys pay	14 Jul 44	Col H C Mac Hendrick	1 dys pay 149 (1) (a)
In the field	7 Sep 44	Pte		AA Sec 15 (1) AWL from Guard duty from 1200 hrs 7 Sep 44 until 2230 hrs 7 Sep 44 (TTA 10 hrs 30 mins)	Sgt Taylor K H Cpl Norris B	Deprived 1 days pay Aut forf 1 days pay total 2 days pay	8 Sep 44	Major R E V PRANGLEY	

No C121731 Name FIELD NGV | Sqn, Battery, or Company | Corps CIC | Date of enlistment 12 Jul 43 | Badges MM | Service or Proficiency Pay $1.50 | 17 MFM 6 (AFB 122) 40/P&S/130 (5413)

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

Place	Date of offence	Rank	Cases of drunk. & less	OFFENCE	Names of Witnesses	Punishment awarded	Date of award or of order dispensing with trial	By whom awarded	Remarks
Field	7 Sep 44	Pte		AWL from 1200 hrs 7 Sep 44 to 2230 hrs 7 Sep 44 (TTA 10 hrs 30 mins)		1 days pay	8 Sep 44	OC Calg Highrs	1 dys pay FRI(149)(1)(a)

(PTO)

Place	Date of offence	Rank	Cases of drunkenness	OFFENCE	Names of Witnesses	Punishment awarded	Date of award or of order dispensing with trial	By whom awarded	Remarks
Field	20Mar45	Pte		AA Sec 15 (1) AWL from 0400 hrs 20 Mar 45 to 0130 hrs 21 Apr 45 TTA 31 dys 21 hrs 30 Mins)	Documentary	60 days detn	29 May 45	FGCM	Forfeiture of 32 days pay
								FR&I 149	(1) (a) 60 dys pay
								FR&I 149	(1) (b) 37 dys pay
								FR&I 149	(1) (c) (i) Tot forf 129 dys pay
						20 dys remission of sentence under "Rules for FD Punishment Camp			

No. C121731 Name Field NGV | Sqn, Battery, or Company | Corps CIC | Date of enlistment 12 Jul 1 | GC Badges | Service or Proficiency Pay | 3/17 MFM 6 (AFB 122) 40/P&S/186 (5413)

Date of last entry in Company Conduct Sheet | No. and date of last drunk | Period not reckoning towards freedom from extra fine | Sheet No 3 | Signature OC Company, etc | Character

Place	Date of offence	Rank	Cases of drunkenness	OFFENCE	Names of Witnesses	Punishment awarded	Date of award or of order dispensing with trial	By whom awarded	Remarks
Field	1Sep45	Pte		AA 15 (1) AWL from 0830 hrs 1 Sep	Cpl McCaffery	Forf 10 dys pay	3 Sep 45	Lt Col GCA McCartney	Forf 2 Dys Pay FR I(149 (1) (a)
Field	2 5 Mar 46	Pte		AA Sec 15(1) WOAS AWL from 0600 hrs 25 Mar 46 to 1730 hrs 26 Mar 46 TTA 1 day 11 hrs 30 mins	Pte Sherwood CD	5 days pay AA 46 FR&I 149(2)	28 Mar 46	DC Cameron Lt Col	Forf 2 Dys pay 149 (1)(a
Field	6Apr46	Pte		AA Sec 40 WOAS Conduct to the Prej etc in illegal possession of WD Veh.	Capt RJ Smith	5 Dys pay FR&I 149(2)	8 Apr 46	DC Cameron Lt Col	

(PTO)

No. 0121731 Name Field NGV | Sqn, Battery, or Company | Corps CIC | Date of enlistment | GC Badges | Service or Proficiency Pay | 3/17 MFM 6 (AFB 122) 40/PAN/136 (5418)

Date of last entry in Company Conduct Sheet | No. and date of last drunk | Period not reckoning towards freedom from extra fine | Sheet No 4 | Signature OC Company, etc | Character

Place	Date of offence	Rank	Cases of drunkenness	OFFENCE	Names of Witnesses	Punishment awarded	Date of award or of order dispensing with trial	By whom awarded	Remarks
Field	11 Apr 46	Pte		(1) AA Sec 15 (1) WOAS AWL from 1400 hrs 11 Apr 46 until 1430 hrs 11 Apr 46 TTA 30 Mins (2) AA Sec 10(3) Resisting an escort whose duty it was to have him in charge	A/CSM Andrusek,J	7 Dys pay FR&I 149(2) 14 dys CB	13 Apr 46	TS KETCHESON Maj	
GERMANY	7 May 46	Pte	Nil	AA Sec 15(1) AWL TTA 2 days 7 hrs 29 mins	DOCUMENTARY	14 days CB 14 Days pay FR&I 149 (1) (2) 3 Days pay FR&I 149 (#1)	10 May 46	Capt JFH Clare	

(PTO)

Place	Date of offence	Rank	Cases of drunken-ness	OFFENCE	Names of Witnesses	Punishment awarded	Date of award or of order dispensing with trial	By whom awarded	Remarks
Germany	8Jul46	Pte		AWL 3days 6 hrs	Documentary	28 days FP 28 days pay 149 (2)	12 July 46	Major Pattison 48 Coy	
				Certified true copy of original in my possession				(RJ Kerfoot) Capt A/Admin Officer 2 Cdn Discipline Unit NWE	
Field	1 Jan 46 to 31 Jul 46	Pte		A.A. Sec 41 (3 charges)	Doc	1 year detn	21 Sept 46	FGCM	

CHARGE SHEET

The accused C-121731 Pte FIELDS, Norman George Victor, MM., 48 Canadian General Transport Coy, RCASC, att 2 Canadian Discipline Unit NWE, a soldier of the Canadian Army Overseas, is charged with:-

FIRST CHARGE Section 41 Army Act — WHEN ON ACTIVE SERVICE COMMITTING A CIVIL OFFENCE THAT IS TO SAY LARCENY, CONTRARY TO SECTION 2 OF THE LARCENY ACT 1916

in that he

In the Field, in Holland, between 1 Jan 46 and 31 July 1946, stole one Chevrolet 60 cwt vehicle the property of person or persons unknown.

SECOND CHARGE SECTION 40 Army Act (Alternative) — WHEN ON ACTIVE SERVICE CONDUCT TO THE PREJUDICE OF GOOD ORDER AND MILITARY DISCIPLINE

in that he

In the Field in Holland, between 1 Jan 46 and 31 July 46, together with K-75374 Pte ANDERSON A.E., was improperly concerned in the improper disposal of one Chev 60 cwt vehicle to Hendrik BLOM, a Dutch civilian.

THIRD CHARGE Section 41 Army Act — WHEN ON ACTIVE SERVICE COMMITTING A CIVIL OFFENCE THAT IS TO SAY LARCENY CONTRARY TO SECION 2 OF THE LARCENY ACT 1916

in that he

In the Field, in Holland on or about 15 July 1946, stole five truck tires and wheels, the property of a person or persons unknown.

FOURTH CHARGE Section 40 Army Act (Alternative) — WHEN ON ACTIVE SERVICE CONDUCT TO THE PREJUDICE OF GOOD ORDER AND MILITARY DISCIPLINE

in that he

In the Field, in Holland, on or about 15 July 1946, together with K-75374 Pte ANDERSON A.E. and L-11247 Pte BOYER G.J., was improperly concerned in the improper disposal of five truck tires and wheels to Hendrik BLOM, a Dutch civilian.

FIFTH CHARGE Section 41 Army Act — WHEN ON ACTIVE SERVICE COMMITTING A CIVIL OFFENCE THAT IS TO SAY LARCENY CONTRARY TO SECTION 2 OF THE LARCENY ACT 1916

in that he

In the Field, in Holland on or about 15 July 1946, stole one 15 cwt vehicle, the property of a person or persons unknown.

SIXTH CHARGE Section 40 Army Act (Alternative) — WHEN ON ACTIVE SERVICE CONDUCT TO THE PREJUDICE OF GOOD ORDER AND MILITARY DISCIPLINE

in that he

In the Field, in Holland, on or about 15 July 1946, together with K-57374 Pte ANDERSON A.E., L-11247 Pte BOYER G.J. and B-133344 Pte LEROUX E.J., was concerned in the improper disposal of one 15 cwt vehicle to Hendrik BLOM, a Dutch civilian.

SEVENTH CHARGE Section 41 Army Act — WHEN ON ACTIVE SERVICE COMMITTING A CIVIL OFFENCE THAT IS TO SAY LARCENY, CONTRARY TO SECTION 2 OF THE LARCENY ACT 1916

in that he

In the Field, in Holland, on or about 15 July 1946, stole one 60 cwt vehicle the property of a person or persons unknown.

CHARGE SHEET Pte FIELDS (Cont'd)

EIGHTH CHARGE
Section 40
Army Act
(Alternative)

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

in that he

In the Field, in Holland, on or about 15 July 1946, together with K-75374 Pte ANDERSON A.E., L-11247 Pte BOYER G.J., and B-133344 Pte LEROUX E.J., was improperly concerned in the improper disposal of one 60 cwt vehicle to Hendrik BLOM, a Dutch civilian.

E.C. Peckham Major

(E.C. PECKHAM) Major
A/Officer Commanding
2 Cdn Discipline Unit NWE

In the Field

18 September 1946

Approved on behalf of J.A.G. in acc. with K.R. (Can) 540
J. Kirkpatrick, Major, D.J.A.

TO BE TRIED BY FIELD GENERAL COURT MARTIAL.

E.R. Heuchan

(E.R. HEUCHAN) Lt-Col
OIC, Cdn Sec HQ RAOR

In the Field

18 September 1946

21 Sep 46 CHECK

I hereby certify that C 121731 Pte FIELD, N. G. V. (MM) is fit to undergo trial by court-martial.

W J Warren.

(W J Warren) Capt
Med Offr
48 Cdn Gen Tpt Coy
RCASC Cdn Tps NWE

Hack

FIELD GENERAL COURT-MARTIAL

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

There should be a separate Convening Order for each person to be tried separately by the same Court. RP 71(C), 109. As to separate charge sheets see RP 62, and as to separate trial on charges in the same charge sheet see RP 108. As to two or more accused charged jointly see RP 16, 109. As to reasons for showing (a) permanent or confirmed rank, and (b) appmt, A/rank or A/appmt, if any, see AA 182, 183, fns, KR Can 308, 328, 330.)

ACCUSED.

Number.	(a) Prmnt R.	(b) Appmt, A/R or A/Appmt.	Full Christian Names.	Surname.	Unit.
C-121731	Pte		Norman George Victor	FIELDS	48 Cdn Gen Tpt Coy RCASC att 2 Cdn Discipline Unit

CONVENING ORDER.

1. Whereas complaint has been made to me, the undersigned, that the person named above as the accused, being subject to military law, has committed the offence(s) set forth in the Charge(s) attached and on (*date*) 18 September 46 endorsed by me, (as the case may be), "To be tried by Field General Court-Martial".

2. And whereas I am of opinion that it is not expedient that such offence(s) should be tried by an ordinary General Court-Martial; (and that it is not practicable that such offence(s) should be tried by a District Court-Martial or a General Court-Martial)

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

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

4. [illegible] attached hereto.

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

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

PRESIDENT.

(Rank.)			(Unit.)
Major	H.A.C. ROSE	CIC	2 Cdn Discipline Unit (NWE)

(*Must be named. RP 106.*)

MEMBERS.

(Rank.)			(Unit.)
Major	D.J. LEACH	CIC	Cdn Sec HQ RAOR (NWE)
Capt	R.C. LANE	RCAC	2 Cdn Mov Control Gp (NWE)

(*Named or detailed. RP 106.*)

WAITING MEMBER.

(Rank.)		(Unit.)

(*Named or detailed, if any. RP 108.*)

JUDGE-ADVOCATE.

(Rank.)			(Unit.)
Capt	R.M. MACLEOD	RCA	AJA 4 Incr "C" Cdn JAG Overseas

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

On Active Service in the Fd

in Belgium (*Country.*)

E.R. Heuchan (*Signed personally. RP 105 fn 2.*) Lt-Col (*Rank.*)

(E.R. HEUCHAN) Lt-Col
OIC Cdn Sec, HQ RAOR (NWE)
Convening Officer.

Date 18 September 1946

CONVENING OFFR WILL INITIAL ALL DELETIONS AND ALTERATIONS

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

Fields Proceedings 21 Sep. 46 (Hogue)

Prosecutor announced that with ref. to charge 1 & 2, no civilian witnesses available & not presenting any evidence.

D.C. asks for finding of Not Guilty.

C. announces such findings

Accused calls character witness.

Pte Anderson, ~~—~~ AC K 75374, sworn states:

I've known him 4-5 mos. during which time I got to know him fairly well. In my opinion he is a little on the reckless side. I believe he enlisted through misfortune - brother killed in war. After coming overseas being engaged to a girl he who later married someone else I believe he became embittered. His military career shows he did his best for his country.

The night that the watches were stolen, I believe entirely that through my influence & that of alcohol that I was entirely if not entirely the cause of any thing Fields did

R.P. 83(B) complied with

Exhibit 3 HOOK

SUMMARY OF EVIDENCE

Summary of Evidence in the case of C-[illegible] Pte [illegible] R.J. C-75374 Pte ANDERSON A.H. C-11847 Pte BOYER G.J., and C-121731 Pte FIELDS E.G.V. No. all of 48 Can General Transport Coy RCASC, att 2 Can Disciplin Unit RCA, Canadian Army Overseas.

First Witness Prosecution

Mr. HOOK, Hendrik, occupation is garage workman, born in Canada 5 sept 1909 having been duly sworn states through the interpreter;

I know all four persons indicating the four accused. The person I met first is Pte Anderson, indicating him. The circumstances under which I first met him were, Mr. Schmidt whom I know came up to me with Pte Anderson because he had some business to do. I cannot tell if it was January or December but it was in the winter time. That night Mr Schmidt came to me with Anderson he had a car to sell and he showed me the truck (60.) They had the car at the time. This took place in Heinenberg Hofstraat 17. I live there. Mr. Schmidt said that Anderson had a car for sale. There were also some tires in the back of the truck, approximately 10,11 or 12. The price was either 3000 or 3500 guilders altogether. I bought this car. I gave the money to Anderson. There was only Schmitz and Anderson there that time. I saw him again. It was weeks later. The second time was weeks later and Mr Schmitz was sick but he telephoned me to come to the house and I came there to meet Anderson. When I met him in the house the second time there was one other soldier with him. I do not know the other soldier. Pte Anderson came about an hour later to my place. He had somebody with him and each of them drove a car. I do not know the it was. He did not step out into the light. Then I bought one big truck, 60 cwt. I paid approximately 7500 guilders for it. I gave the money to Anderson. I saw him some weeks later, he was not alone. When he came the third time he was in company with Pte Boyer, indicating him. I cannot say whether they were the only two present at that time. They offered me another truck and I bought it for 8000 guilders. This may have been the man I mistook for an officer indicating Pte Boyer. I gave the money to Pte Anderson. Pte Anderson came a fourth time some weeks later there were either 3,4 or 5 men. I am not say I could not see in the dark. With him were Pte Larsen and Pte Fields indicating them. They came in the night and offered 6 tires for sale. I bought them for approximately 900 guilders. I gave the money to Pte Anderson. I am sure that these are the four men I referred to above. I used the tires, and I left the cars untouched. They have been broken up by ourselves. I did so because after the last transaction it occurred to me that these had been stolen. I gave all the parts up. I gave out Convoy 87 tires. There were two of the Canadians. When the Canadians came to me I told them about everything and the things have been recovered by the Canadian Army

Questioned by Pte Larsen: Do you remember the date the 5 or 6 tires were sold?

A. No. I do not remember.
Q. What month was it?
A. I do not remember.

No further questions by either of the accused.

Hendrik HOOK.

SECOND WITNESS: Johannes Gerardus Antonius BRINK, boerevoldstraat 24 Oegstgeest.
Precaution. Holland, occupation salesman for Mr. Blok.

In this case I recognize Anderson and Pte Fields, indicting them. I met them in Heinsburg in our garage. We had a transaction and bought a car. Chevrolet 39 cwt. My boss bought the truck and we were together it is very difficult to know but I think the price was about 2000 or 1500 guilders I am not sure. I saw the money handed over to Pte Anderson. I never saw those two men on any other occasion. The stuff he bought some of it was sold and others are in Heinsburg, and the Gruelian Protest picked some stuff up from Heinsburg. The trunks were broken down at that time. It is very difficult to remember but it is over three months ago since the truck was bought. The truck was all that was bought at the time. There was nothing but more jerricans in the truck. I don't think, oh yes, I know now there were some tires, 4 or so, I do not remember how many. These were in the trunk when it was bought I am certain that these two men I have identified are the men mentioned in this my statement.

The accused refuse to question the witness.

J.G.A. Brink.

TRIAL WITNESS

Prosecution. S-28869 Cpl Sharp J., 1 Con ATS, Provost Corps having been duly sworn stated:

On 24 July 46, Major Potts of Con River Bureau in Johannesburg requested an investigation.

Q. To what are you referring?
A. I am referring to notes made at the time of the investigation.

This was in connection with a 15 cwt GS vehicle and a 60 cwt vehicle both reported to have been stolen on 10 July 46. Approximately 10 August 46 as a result of previous inquiries I proceeded with Sgt Gutheret to a garage in Heidelberg where the proprietor was interviewed. He admitted that he had purchased one 15 cwt and four 60 cwt vehicles from Canadian soldiers. One he named as Andy. He stated or it was later learned that a Pte. Schmits of the Regt had directed the soldiers to the Heidelberg garage. As a result of the interview with this man a large amount of vehicle parts including tires were recovered and were brought to Con Rives Bureau garage where they have been kept under lock and key. I saw the property and later instructed a breakdown vehicle to pick up the stuff and have it brought in. I took an interview with Pte. Schmits and as a result of that interview I arrested Pte Anderson and later Pte Boyer. Pte Boyer when interviewed at the police station gave a statement I read the section which he signed before proceeding with the statement. The statement was given on the 15 Aug45. Pte Boyer was again interviewed on 20 August 46 at which time he was cautioned and volunteered to give a further statement. I now produce both these statements. Statements received by The Court and marked Exhibit "A". On the 19 Aug 46 I was directed by Pte Anderson who informed me that he had sold 4 four electric motors to the proprietor of this garage who admitted buying these machines from Anderson. His name was either Davis or Dubbert. On interview he said he had paid 1000 guilders for the four machines. After receiving the machines from him a thorough search of the garage was made as a result of which two battery charging machines were recovered. The four motors and two battery charging machines were brought to the Con Rives Bureau Garage where they have since been under lock and key.

Questioned by Anderson.

Q. What day did you say you went to the garage in Heidelberg.
A. Approximately 15 Aug 1946.

No further questions by either of the accused.

S-28869 Cpl Sharp J. His X for C.

HEREBY GIVEN: Mr. BOSMAN, Johannes Cornelius, Blaauwen, occupation: supervisor on the Plein in The Hague, having been duly sworn.

I recognize two men in this room, indicating Pte Leroux. Boyer. At about 8 o'clock in the evening on a Monday, or whose driver came to the car park with a lady in a truck. He parked the car and I gave him a ticket. At approximately 2400 hrs these two men came to the park. The first of the two men indicating Leroux got in the cab of the truck and I asked him for the ticket. The first man indicating Leroux sat behind the wheel, only when I asked him for the ticket and indicating that his friend being a chauffeur would have the ticket. The man behind the wheel got out of the cab and went to the first street and I looked after them and then they were at the Gevaerysstraat I did not see them again. About ½ of an hour later I was in the corner of the park when I heard the truck motor start up. Then I ran up to them and shouted stop. They went up to the first street with the lights out. I think that it is the first one indicating Leroux who was driving the truck, the first time I could not see well as I had to jump out to one side. The first time the two soldiers came Pte Leroux spent about 15 minutes fussing around the motor apparently waiting for his friend.

The accused refuse to question the witness.

J.C.B. Bosmik.

NORTH AFRICA
Prosecution.

Mr. MOSSEK, Johannes Cornelius, Nicolaas, occupation car park supervisor on the Plein in The Hague, having been duly sworn states:

I remember two men in this room, indicating Pte Leroux and Pte Royer. At about 8 o'clock in the evening on a Sunday, an under officer came to the car park with a lady in a truck. He parked the car and I gave him a ticket. At approximately 2100 hrs these two men came to the park. The first of the two men indicating Leroux got in the cab of the truck and I asked him for the ticket. The first man indicating Leroux sat behind the wheel, said when I asked him for the ticket and indicating that his friend being a chauffeur would have the ticket. The man behind the wheel got out of the cab and went to the Hout street and I looked after them and then they were at the Conservatorstraat I did not see them again. About ½ of an hour later I saw in the corner of the park when I heard the truck motor start up. Then I ran up to them and shouted stop. They went up to the Hout street with the lights out. I think that it is the first one indicating Leroux who was driving the truck, the first time I could not see well as I had to jump out to one side. The first time the two soldiers came Pte Leroux spent about 15 minutes fussing around the motor apparently waiting for his friend.

The accused refuse to question the witness.

J.C.K. Moss
(J.C.K. Mossek.)

FIFTH WITNESS
Prosecution

Mr. HARTT, Frederick, occupation unknown born Den Haque 9 Aug 1918, domic: March 177 Den Haque, Holland having been duly sworn states:-

I recognize one of the two soldiers either Pte Anderson or Pte Boyer. The first time I met him was in my own place in the evening. The first time they came to me with a car and I went with them to Helmahevy to a garage owner, W.M. There the car was sold. I think by one of those two soldiers Pte Anderson or Pte Boyer. I do not know the price exactly but I think it was several thousand guilders. The soldier received the money. The second time I was ill and I telephoned the garage owner and there the garage owner went to the address of the soldier which I gave him. For the first transaction I got some money from the garage owner. After my telephone conversation I got money from garage owner too. In the book of the truck there were times, approximately 10 or 12. I never saw this person again after this.

The accused refuse to question the witness.

F. Hartt
(F. Hartt.)

16 Aug 45.

STATEMENT OF L-11347 Pte BOYER G.J.,
48 Gdn Gen Tpt Coy RASC.

Exhibit "B"
"T.T.B. O'Neill" Capt.

I have been warned that I am not obliged to make a my statement unless I wish to do so but that any statement I do make will be taken down in writing and may be used in evidence.

Signed "G.J. Boyer".

One evening during the middle of July 45 I met Pte Leroux in front of our billets in Schevelingen. He asked me if I had any money to which I replied "I was broke". We then decided that we would meet at Pte Anderson's girl friends house later in the evening. I went to the house where I live with my wife and stayed there until about 2100 hrs. I then went to Den Haggie with my wife to Pte Anderson's girl friends house. Pte Anderson was in the house at the time, with his girl friend together with Leroux and Pte Fields. We four went outside, leaving the two women in the house. We all decided that we would go to the car park in Den Haag to steal a vehicle. It was decided that we would go to the park and that Pte Leroux and I would take the vehicle from the park. We saw a 15 cwt Military vehicle which was mobile. Pte Leroux drove it fro the car park while I stood on the running board. We drove back to a point near the house, where we met Pte Fields and Anderson. Either Anderson or Fields took over and drove the veh iecl to a garage just off the Scheveningen Haag Highway. I remained on the street with Pte Leroux and I believe Anderson and Fields went into the house. They returned to us a few minutes later and we drove back to Schevelingen in the same 15 cwt. We stopped near each billet and I got into a 60 cwt to try to start it but found that it had been demobilized. Fields, Leroux and I then got into a 60 cwt that was mobile and returned with this vehicle to where Anderson was waiting.

Anderson and Fields led the way back to the garage in the 15 cwt while I followed them in the 60 cwt. Pte Leroux was with me when I drove this vehicle. When we arrived at the garage I backed the 60 cwt inside and then waited with Leroux for Anderson and Fields to return with the money.

They met us a few minutes later and I received some money from Pte Anderson which I believe to be two hundred and fifth or three hundred guilders. Pte Anderson also handed some money to Pte Fields and Pte Leroux but I do not know how much they received. As both vehicles had been sold we hitchhiked back to Den Haag. I picked up my wife at Anderson's girls place and we returned home together at about 0430 hrs.

Statement taken down in writing and signs are witnessed by

L-22060 Cpl Sharp K.
6th Special Inquest Section
6th Armoured Corps.

0800 hrs 16 Aug 1945.

Signed.
"G.J. Boyer".

STATEMENT OF: L-11247 Pte Boyer G.J.
48 Gen Gen Tpt Coy RASC.

20 Aug 46.

I have been warned that I am not obliged to make any statement unless I wish to do so, but that any statement that I do make will be taken down in writing and may be used as evidence.

Signed. "G.J. Boyer".

I wish to add further to the statement given by me on the 16th Aug 46. A few days prior to the theft of the 15 cwt vehicle which was approximately the middle of July 1948, I was concerned with the theft and disposal of five 40 cwt tires and wheels. On this particular day I had been detailed as platoon duty driver and consigned a 60 cwt vehicle. At approx 1900 hrs Pte Anderson came with me on a trip to Den Haag. While driving along the road Pte Anderson asked me if I had anything to sell. I knew of a 60 cwt vehicle that belonged to a civilian and was always parked on the same street where I lived. We decided to meet later this same evening and remove the tires from the truck.

Shortly after 2000 hrs after I had completed my tour of duty, I met Anderson and Pte Fields near the billets. Pte Anderson said he could need three men for the job and that a cwt for Fields would not do as any harm. We all got into the vehicle that I had been driving and drove to the street where the civilian truck was parked. Pte Anderson and Fields got out and hooked a tow cable from my vehicle into the civilian vehicle, they got in and gave me the signal and I drove on. I towed them until their motor was running after which they unhooked the cable and drove out of town where we stopped. The three of us got out and jacked up the 60 cwt owned by the civilian. We removed all tires and wheels from it and put them in the back of the truck I was driving. There were five tires altogether. The three of us got in and went to a garage where we unloaded the tires. Pte Anderson went inside with the owner of the garage to collect the money. Fields and I waited for him beside the vehicle which was in the street in front of the garage. Anderson joined us a few minutes later and we drove to Anderson's girl friends place in Den Haag. We then gave me two hundred and seventy five guilders. Fields also received some money from Anderson but I donot know how much. After receiving the money I returned my vehicle to the unit car park. In the statement on 16 Aug 46 I mentioned having received two hundred and fifty or three hundred guilders for the vehicles. I was eighteen at the time and I am clearly recall having received seven hundred Guilders from Pte Anderson as my part in this deal. The tires and the vehicles were sold to the same man who is the proprietor of the garage between Den Haag and Rotterdam.

Signed "G.J. Boyer".

Statement taken down in writing and signature witnessed by

A-5848 Cpl Sharp J.
Gen Spec Investn Section
Gen Provost Corps.

1330 hrs 20 Aug 46.

The accused was cautioned as follows:-

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

The accused declins to make any statement.

The accused declins to call any witnesses.

Certified that all the provisions of Rr 4(c)(d)(e)(f) and (g) have been complied with.

Taken through an interpreter by shorthand and in the hearing and presence of all four accused before me this 10th and 11th day of September 1946.

P.J.O'Neill
(P.J.O'Neill) Capt.
Officer detailed to take
Summary of Evidence.

The interpreter Mr. Henri W.A. Van Burgen living at Vlissingen is in the Hague, Holland was duly sworn at the beginning of this Summary of Evidence.

P.J.O'Neill
(P.J.O'Neill) Capt.
Officer detailed to take the
Summary of Evidence.

I hereby acknowledge receipt of one copy of the Summary of Evidence and one copy of the Charge Sheet, free of charge this 18th day of September 1946.

W.H.J. Lee

B September 1946

I hereby request that I have an officer defend me in my forthcoming trial by Court-Martial, I request the services of Capt K.M. Rose if he is available.

C-121731 Pte Fields M.C.V.MM.

LIST OF WITNESSES

Prosecution

Mr. Hendrik HIJE, Marktstraat 17, Heinsberg, Holland

Mr. J.G.A. Brink, Tourrevaldestraat 24, Capelgemeet, Holland

L-[illegible] CSM [illegible] J, 1 Cdn SIB, 2 Pro Corps.

Mr. J.G.H. HOOGEN, Car park supervisor, "The Plein", Den Haag

Mr. Frederik SCHMITZ, Sewein Straat 279 Den Haag, Holland.

Cdn SUTHERST R.A. 1 Cdn SIB, Cdn Pro Corps.

Defence.

Nil

LIST OF EXHIBITS

Exhibit "A" Two statements of L-11547 Vis Beyer G.J. dated 16 Aug and 20 Aug 46.

15 cwt, four GS ont trucks, tires and equipment recovered by Cdn Army and now held at Cdn Mixed Bureau Garage.

NOTICE PURSUANT TO RULES OF PROCEDURE 76.

Take notice that CSM Sutherst R.A. of 1 Cdn Special Investigation Section, Cdn Provost Corps, will be called as a witness for the Prosecution and that he will corroborate the statements of CSM Shury J., 1 Cdn Special Investigation Section with regards to recovery of Canadian Army vehicles, tools and equipment including tires.

[signature]
(F.T.H.O'Neill) Capt.
Officer detailed to take the
Recovery of Evidence.

13 September 1946.

13 September 1946.

I hereby request that I have an officer defend me in my forthcoming trial by Court-martial. I request the services of Capt R.A. Ross

if he is available.

[signature]
accused.

3 Canadian Discipline Units (N.W.E.)

A.A.C.R.

The Hague.
21 Sept. /46

Plea of Mitigation, in the case of —.
S. 121731 Pte. Fields N.G.V. (N.M.)

Gentlemen —

Pte. Fields enlisted at Peterborough, Ontario, in July 1943 at the age of 18. as a reinforcements for the Canadian Infantry Corp. He came overseas in the Spring of 1944, & on to Europe in August of the same year, as a reinforcement for the Calgary Highlanders.

He was a Sniper, & was wounded in the legs near Breda, Holland, & was sent back to a hospital near Calais, for his parts in this action, he recieved the "Military Medal".

Pte. Fields was back with this Regiment some six weeks later, but was wounded again, & was admited to hospital.

It was December before he was able to return to his unit, & due to his former wounds & nerves, he was changed from Sniper to stretcher bearer.

A short time before V.E. day, he was blown from a bridge, & suffered from injuries & bomb blast. He was then sent back to U.K.S. & was there when the war ended in Europe.

He volunteered for the Canadian Army of Occupation, & was transfered to a company of the Stormont, Dundas & Glengarry Highlanders, near Varel, Germany, where he served, until transfering to 48th General Transports about the end of June/46. He was on repatriation when he was arrested in Aug. 46.

This soldier has some charges on his M.F.M.6, but no serious charge, & I feel that his excellent record in action, more than overcomes his past faults. He is still very young, a few drinks, & the lure of easy money had caused him to commit the offences to ~~which~~ which he has pleaded guilty.

His father owns a transport service, & Pte. Fields expects to join him in business, as soon as he is repatriated.

I respectfully ask the court to carefully consider the above facts, & to be as lenient as possible with this soldier.

Respectfully.

H.R. Rose Capt.
Defending Officer.

Exhibit "J" to 4DCR

ARMY FORM B.296 (WAR).

ent as to Character and Particulars of Service of Accused.

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

Rank.	Name.	Regiment (or as the case may be).
Pte	Field NGV, WM	X-4 List NWE

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

For	Sec 15(1)	8 times.
For	Sec 8	1 times.
For	Sec 9 (2)	1 times.
For	Sec 40	5 times.

Date of first entry in Field Conduct Sheet 7 Feb 44

Date of last entry in Field Conduct Sheet 8 July 46

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

*3. [redacted]

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

5. The present age of the accused is 21

6. The date of his attestation 12 July 43

7. [redacted]

8. The accused is in possession of Military Medal, 1939-45 Star Italian Star, Fr & Ger Star, CVSM & Clasp.

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

	Date of Promotion.
In the substantive rank of	
In the war substantive rank of	
In the acting rank of	

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

(7041) WL42128/4309 42,000 11/44 A.& E.W.Ltd. Gp.598 Forms F.2 & Wards

Pin here Loose Sheets of Record.

RECORD FORM D—PROCEEDINGS ON PLEAS OF NOT GUILTY TO

D1. President to accused: Do you wish to apply for an adjournment on the ground that relating to procedure before trial have not been complied with, and that you have been prejudiced the ground that you have not had sufficient opportunity to prepare your defence? Ans. No

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

D2. The Prosecutor makes (an) (his) opening address.(1) Record address per Notes, subject to RP 95(C).)

(1. RP 39(B), 60(A)(B), 90, 92(C)(D). As to Prosecutor giving evidence himself see RP 39(D)(E).)

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

(1. RP 39(C), 114, KR Con 555. Record evidence per Notes.)

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

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

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

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

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

Do you intend to call witnesses on your behalf? Ans. Are they witnesses as to character only? Ans.

(1. RP 155. 2. RP 40(A), see 80(D). 3. RP 40 fn 10. 4. RP 40 fns 2-9.)

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

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

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

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

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

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

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

RECORD FORM E—PROCEEDINGS ON CONVICTION BEFORE SENTENCE.

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

Ans. I wish to call one witness as to character

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

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

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

E3. President to accused: Do you wish to address the Court on the Statement(1) and Conduct Sheet(2), and in mitigation of punishment?(1) Ans. Yes through my defending officer

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

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

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

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

(1. When several accused tried separately see RP 76(a). One sentence only, comprised of the punishment or punishments laid down in AA 41, C4 and its proviso, is to be awarded to cover all charges in all charge sheets on which accused found guilty. RP 48. As to sentences see AA 44, 138, 182. RP 46-50, 69, 110, 180(A). KR Con 208, 330, 563-566, Overseas RO 309, 2323, MANL p 60, 757-759. As to punishment or detention see AA 44(1)(b), 65(1). KR Con 564. As to reckoning time of arrest by civil authorities, or time already under sentence of imprisonment or detention see AA 44(1)(b), 65(1). KR Con 564. 2. RP 50. As to release from arrest by Confirming Offr see KR Con 567. As to assembly and disposal of record after trial see instrs on back of Convening Order.)

PRESIDENT OR JA WILL INITIAL ALL DELETIONS AND ALTERATIONS.

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

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

D2. The Prosecutor makes (an) [illegible] opening address.(1)
(1. RP 39(B), 60(A) (B), 90, 92(C) (D). Record address per Notes, subject to RP 95(C).)

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

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

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

President to accused: Do you wish to give evidence yourself as a witness, make a statement, or do neither? Ans. [illegible] Do you intend to call witnesses on your behalf? Ans. .....
Are they witnesses as to character only? Ans. .....
(1. RP 155. 2. RP 40(A), see 80(D). 3. RP 40 fn 10. 4. RP 40 fns 2, 8.)

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

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

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

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

RECORD FORM E—PROCEEDINGS ON CONVICTION BEFORE SENTENCE.

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

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

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

E4. The President states that the Court is closed to consider the sentence, and that the sentence to be awarded by the Court, being subject to confirmation, will not be announced, but will be promulgated later, and the proceedings in open court are accordingly terminated.(1)
(1. AA 54(6), RP 122(A).)

E5. The Court considers the sentence.(1) The President records the sentence in Part I of the Schedule, which is dated and signed by him and the JA, if any.(2)
(1. When several accused tried separately see RP 7(a). One sentence only, comprised of the punishment or punishments laid down in AA 41, 44 and its proviso, is to be awarded to cover all charges in all charge sheets on which accused found guilty. RP 48. As to sentences see AA 44, 138, 182, RP 46-50, 69, 118, 119(A), KR Con 208, 230, 563-566, Overseas RO 309, 2323, MAL p 60, 737-739. As to sentences assigned for civil offences by the law of England see AA 41(5), MAL p 130. When accused already under sentence of imprisonment or detention see AA 44(1B), 68(1), KR Con 564. 2. RP 50. As to release from arrest by Confirming Offr see KR Con 567. As to assembly and dispersal of record after trial see notes on back of Convening Order.)

PRESIDENT OR JA WILL INITIAL ALL DELETIONS AND ALTERATIONS.

Finding entered as No. 5228 in the Record of Courts-Martial kept in the office of the Judge Advocate-General this 14th day of Nov 1946

SCHEDULE.

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

Accused: C 121731 Pte Fields N.G.V. M.M.

Charge. (Insert "alternative" where applicable.)	Plea. (See Instrs p 2.)	Finding. (See note below.)
1st AA 41	Not Guilty	Not Guilty
2nd AA 40 (ALT)	Not Guilty	Not Guilty
3rd AA 41	Guilty	Guilty
4th AA 40 (Alt)	Withdrawn by Pros (RP 35(e))	
5th AA 41	Guilty	Guilty
6th AA 40 (ALT)	Withdrawn by Pros (RP 35(e))	

CHARGE	PLEA	FINDING
(Space for use of required for further charges, accused charged jointly, special findings, etc.)		
1st AA 41	Guilty	Guilty
2nd AA 40 (ALT)	Withdrawn by Pros (RP 35(e))	

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

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

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

Time in confinement awaiting present trial—a total of 26 days, of which 0 days were spent in hospital.(1)

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

Sentence Awarded by the Court:

To undergo detention for one (1) year

(Sgd) [illegible] Judge-Advocate, if any. 21 Sep 46 Date awarded. (Sgd) H.A.C. Rose Major President. (RP 45, 58)

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

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

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

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

(For duties and powers see AA 54, 57, RP 37(D) fn 6, 46(A), 51-56, 120, MML pp 759-761, KR Con 567-577. Acquittals require no confirmation and cannot be revised: AA 54(3). Sending back finding or sentence for revision by Court: AA 54(2), RP 120(G). If not confirmed, accused may be tried again: AA 157, MML p 64. Minute of confirmation or non-confirmation may be altered before promulgation: RP 53, MML p 65. Quashing after promulgation: KR Con 572. Duties and powers of revising offrs: AA 57, 57A, RP 53A, 54. The Confirming Offr must sign here personally. AA 172 fn 1.)

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

I confirm the findings & Sentence

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

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

Date 15 Oct 46. (Sgd) J.C. Blanchett Lt Gen. Commanding C of S CMF Confirming Officer.

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

Accused.	Date.	Signature of Offr.
C 121731 Pte Fields N.G.V.	19 Oct 46	W.M. Andrews.

ALL DELETIONS AND ALTERATIONS WILL BE INITIALLED.

DEPARTMENT OF NATIONAL DEFENCE
- Army -

HQC 9039-1 FD 44
Adm D1(b)

OTTAWA Ontario
3 Dec 46

REGISTERED

District Officer Commanding
Military District No 2
TORONTO Ontario

Review of Sentences Awarded by CsM

Ref your TA 7951 UNCLAS dated 3 Dec 46.

2. Enclosed herewith CM proceedings in respect of the under-mentioned soldiers:

K.75374 Pte Anderson A E
C 40790 Pte Barsley G J
D.6778 Pte Benoit J
K.41510 Pte Blainey S
L.11247 Pte Boyer G J
D.118832 Pte Emond C
C.121731 Pte Fields M G V
B.119218 Pte Heil H
A.23406 Pte Jones R C
C.1505 Gnr Monnell F G
B.52689 Pte Paisley D J
B.17791 Pte Ranger F F
B.631326 Pte Winter M R
F.58117 Pte Wong F W
K.75332 Gnr Martin J D
H.195694 Pte Timms C
A.29023 Pte Thomas H A

3. May the a/m proceedings be returned to this HQ when they have served the purpose for which they were requested.

[signature]
(E C Weeks)
Major-General
Adjutant-General

Encl;

(4)

HQC 55-F-854 Adm B1(d)

OTTAWA, 16 Nov 46.

District Officer Commanding,
Military District No 2,
TORONTO, Ont.

C-121731 Pte FIELDS N G V

Further to RANKS 2027 dated 3 Nov 46, herewith copy of CMHQ letter, together with AFA 5104, concerning the m/n soldier.

2. It is noted that CMHQ make no recommendations towards discharge.

3. Your attention is invited to the provisions of AG Circular Letter R.918(b) dated 5 Sep 46.

(W.H.S. Macklin)
Brigadier, V.A.G.
for Adjutant-General

MGM/PB

INCLUDE ORIGINATOR'S NO. AS INTRODUCTION IN TEXT OF MESSAGE

CLEAR

ARMY MESSAGE

(OUTGOING)

FILE: HQC 8536-6 Vol.8 Adm 81(6)

PLACE: OTTAWA ONT

DATE: 8 NOV 46

DOC MD 6
HALIFAX N S

DOC MD 2
TORONTO ONT

DOC MD 12
REGINA SASK

COMMANDER
CAMP BORDEN ONT

RANKS 2027 UNCLAS

PARA ONE TEN SUS AND ONE EX-OFFICER LISTED PARAS TWO AND THREE BELOW BEING RETURNED TO CDA IN CUSTODY ABOARD SALARIA XGX 341 ARRIVING APPROXIMATELY 19 NOV 46

PARA TWO D-81967 CAKE A E - B-85899 DAISLEY E M
B-25805 HUGHES E - D-57006 CHAUVIN A
EX-MAJOR W O SMITH

PARA THREE K-75374 ANDERSON A E - L-11247 BOYER G J
C-121731 FIELDS N G V - B-133344 LEROUX E J
D-92004 LYNCH L W - SC-122982 SHULIST J A

PARA FOUR FOLLOWING MEDICAL EXAMINATION DESPATCH TO 86 MDB CAMP BORDEN EXCEPT EX-MAJOR W O SMITH WHO WILL BE DESPATCHED UNDER ESCORT TO COMD TWELVE

PARA FIVE ADDSD COMD SIX RPTD COMD TWO COMD TWELVE AND CAMP BORDEN

PARA SIX ACK

COPIES:- PM - D MOV (2) - D REPAT

1 GL/PB

ORIGINATOR'S INSTRUCTIONS

THIS MESSAGE MAY BE SENT AS WRITTEN BY ANY MEANS EXCEPT, INCLUDING WIRELESS

DEGREE OF PRIORITY

TIME OF ORIGIN 2.30 P

SIGNED

E.W. Hale Jacklin
Brigadier
for Adjutant-General

SINGLE FORM FOR CLEAR MESSAGE

USE FOR ADDITIONAL DISTRIBUTION

THIS COPY FOR: H.Q. C. 55-F-854
M.D. 10/Fields NGV/1

FIELD GENERAL
MEMORANDUM - ~~DISTRICT~~ COURT-MARTIAL

No. C.121731 Name FIELDS, N.G.V.

Rank Pte. Unit 48 Cdn Gen Transpt Coy RCASC Att'd 2 Cdn Discp Unit NWE.

Charge
1 - AA 41 WOAS committing a civil offence that is to say Larceny contrary to Sec 2 of The Larceny Act 1916.
ALT 2 - AA 40 WOAS conduct to the prejudice of good order & mil.discp
3 - AA 41 WOAS committing a civil offence that is to say Larceny contrary to Sec 2 of The Larceny Act 1916.
ALT 4 - AA 40 WOAS conduct to the prejudice of good order & mil.discp.
5 - AA 41 WOAS committing a civil offence that is to say Larceny contrary to Sec 2 of The Larceny Act 1916.
ALT 6 - AA 40 WOAS conduct to the prejudice of good order & mil.discp.
7 - AA 41 WOAS committing a civil offence that is to say Larceny contrary to Sec 2 of The Larceny Act 1916.
ALT 8 - AA 40 WOAS conduct to the prejudice of good order & mil.discp.

Date of Crime 1 - 31-7-46, 2 - 31-7-46, 3 - 15-7-46, 4 - 15-7-46, 5 - 15-7-46, 6 - 15-7-46, 7 - 15-7-46, 8 - 15-7-46.

Date of Arrest Charge Signed 18-9-46

Orders for ~~F~~FG D.C.M. OIC, Cdn Sec HQ BAOR.

Place and Date of Trial Field 21-9-46

Sentence 1 yr det.

Date of Confirmation 15-10-46

Date of Promulgation 19-10-46

Entered in Records of J.A.G. as No. 5228

Date 14-11-46 Balance of sentence remitted by Conf. Auth. 20-3-47

MEMO Guilty of 3rd, 5th and 7th charges. 4th, 6th and 8th charges withdrawn by the Prosecutor [R.P. 35 (c)].

Reviewed at CMHQ also NDHQ.

S.S. Stephens, Capt.
for Judge Advocate-General

SM-S 48 (M-709)

HQC 55-F-854
(JAG/D).

OFFICE OF THE JUDGE ADVOCATE GENERAL
OTTAWA, Ontario, 14 November 46.

Canadian Military Headquarters,
2 Cockspur Street,
London S.W. 1,
ENGLAND. (Att'n Major-General i/c Administration)

C.121731 - Pte. FIELDS, N.G.V.

Receipt is acknowledged of your 10/Fields NGV/1, dated 29 Oct 46, under cover of which was forwarded original proceedings of FGCM 21 Sep 46 together with original AF A3104 in respect thereof.

(R.J. Orde) Brigadier,
Judge Advocate General.

/CG

AIR MAIL Quote No.10/Fields NGV/1

CANADIAN MILITARY HEADQUARTERS

LONDON

29 Oct 46

r 4598

CENTRAL REGISTRY (Army)
OTTAWA, CANADA
NOV 13 1946
File C55-F-854
Chrd. to
Referred to

CONFIDENTIAL

The Secretary,
Department of National Defence (Army),
Ottawa, Canada.

C 121731 Pte Fields, N.G.V.

1. The m/n soldier is now serving a sentence of one year detention awarded by FGCM 21 Sep 46 for three civil offences, that is to say, three charges of stealing (AA Sec 41).

2. If he earns full remissions for good conduct while serving his sentence, the earliest date on which he should be released is 20 May 47.

3. This soldier has been medically examined and certified as fit to undergo his sentence.

4. It has been directed that this soldier be returned to Canada in custody under sentence, and he will be so returned as soon as suitable transportation is available. Herewith original proceedings of FGCM 21 Sep 46 together with original AF A3104 in respect thereof, on which this direction has been endorsed.

for (J.C. Murchie) Lieutenant-General
Chief of Staff
Canadian Military Headquarters

Encs 2

Copy to: OIC Records

5218

19a CMHQ 1000-7M
40/7 & S/808 (7383)

CONFIDENTIAL

H.Q.C. 55-F-855

DEPARTMENT OF NATIONAL DEFENCE OTTAWA, CANADA

S[illegible]-952

SUBJECT

FIELD GENERAL COURT-MARTIAL

FARRANCE, GEORGE WILLIAM C-[illegible].

CENTRAL REGISTRY	DATE	FILE OR REF.	INITIALS	REFERRED TO	INITIALS	DATE
				(If persons for which reserved copies be supplied on this line, enter here "With Minute")		2-12-46

CONFIDENTIAL
H.Q.C. 55-F-855

OVERSEAS COMBINED

RECEIVED 14 MAY 1945 JAG BRANCH C.M.H.Q.

RECORDED AT CMHQ IN AB 160 5G-67 68 69

CPA96 (1st Issue of AF 53) 40/P & S/1000 (2934)

FIELD GENERAL COURT-MARTIAL

Convened by Order of Brig G S N Gostling, ED, Comd 2 CBRG dated 13 FEB 45

ACCUSED.

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

Number	(a) Prmnt R.	(b) Apptmt, A/R or A/Apptmt.	Full Christian Names.	Surname.	Unit.
C-64119	Pte	(A/Cpl)	George William	FARRANCE, Nth Shore R, 10 CBRB
C-80238	Cpl		Granville	WILSON, CH of O, 10 CBR Bn
A-22435	Pte		Harold	HAGGERTY, CH of O, 10 CBR Bn

PROCEEDINGS REVIEWED

Lieut-Colonel
REVIEWING OFFICER, JAG BRANCH C.M.H.Q.
14 May 45

PROCEEDINGS OF TRIAL.

Held (at) (in (country) BELGIUM on (date(s)) 15 FEB 45

Farrance 23 | NO
Wilson 23 | III
Haggerty 23 | NO

RECORD FORM A—OPENING PROCEEDINGS AND ARRAIGNMENT

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

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

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

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

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

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

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

A5. President to accused: Do you object to N/A as interpreter ? Ans N/A

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

The shorthand writer is sworn.(1)

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

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

Ans NO (2)

(1. RP 110. 2. If no objection, waiting member retires. RP 68(8). If objection, see procedure AA 51, RP 25, 71, 18, MML p 742.)

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

President	Major	D MacKENZIE,	Essex Scot, X-9 List att 3 Cdn INTD
Member	Captain	F A BAILLARGEON,	Gen List, att Cdn Sec 1 Kch, HQ 21 A Gp
Member	Captain	E B VAN DINE,	R/ASC, att Cdn Sec 1 Kch, HQ 21 A Gp
Judge-Advocate	N/A		
Prosecutor	Major	R F WILLSON,	Linc & Welld, att Cdn Sec 1 Kch, HQ 21 A Gp
Defending Offr	CAPT	E E TEAGLE,	CALG HIGH R/ASC ATT CDN SEC 1 KCH, HQ 21 A GP
	CAPT	N G D HUNGERFORD.	

Questions by President: Is the Prosecutor a lawyer ? Ans YES Is the Defending Offr a lawyer ? Ans NO (1)

(1. RP 26, 27, 109, 111. List of offrs under instr will be returned separately with proceedings for information of Conv Offr.)
(2. If Pros a lawyer and Def not, see procedure in RP 27 (B). Not followed when RP 89 (B) and fn 2 were not followed. See DF p 33.)

A8. The accused C-64119 Pte (A/Cpl) FARRANCE G W.
C-80238 Cpl WILSON G.
A-22435 Pte HAGGERTY H.
before arraignment make(s) (no) (a) plea (1)

(1. If a special plea is made for separate trial on one or more charges (RP 62(2), 108), or as to the jurisdiction of the Court (RP 34, 35(A), 113), or in bar of trial (RP 36), or as to accused's mental fitness to stand trial (AA 130, RP 57), or by one of several accused charged jointly to be tried separately (RP 16, 71), such plea, the addresses made in support or against, the evidence, if any, and finding are recorded per Notes. For forms of record see references in fns to RsP cited. Insert in AB rank and name of the accused making the plea.)

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

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

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

PRESIDENT OR JA WILL INITIAL ALL DELETIONS AND ALTERATIONS.

2CANG Vol III P. 115

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INSTRUCTIONS ON PROCEDURE AFTER ARRAIGNMENT

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

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

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

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

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

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

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

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

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

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

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

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

President to accused : Do you wish to make a statement ? Ans NO (5)

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

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

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

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

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

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

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

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

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

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

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

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

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

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

PRESIDENT OR JA WILL INITIAL ALL DELETIONS AND ALTERATIONS.

Pin here Loose Inspection of Record.

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

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

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

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

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

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

President to accused: Do you wish to give evidence yourself as a witness, make a statement, or do neither? Ans YES. A/M FARRANCE - FACTS & CHARACTER WITNESS PTE HAGGERTY CHARACTER ONLY

President to accused: Do you intend to call witnesses on your behalf? Ans YES. A/M FARRANCE - FACTS & CHARACTER ~~NO~~ MA

(1. RP 155. 2. Are they witnesses as to character only? 3. RP 40(A), see 80(D). 4. RP 40 fn 10. 5. RP 40 fns 7, 9.)

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

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

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

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

RECORD FORM E—PROCEEDINGS ON CONVICTION BEFORE SENTENCE.

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

Ans NO

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

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

E3. President to accused: Do you wish to address the Court on the Statement(s) and Conduct Sheet(s), and in mitigation of punishment?(1) Ans NO
(1. RP 37(C), 46(D). 2. Address, if any, recorded (by Notes). Court should permit accused or his witnesses to prove on oath anything here or previously stated which would affect the amount of punishment. RP 37(F) fn 7.)

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

E5. The Court considers the sentence.(1) The President records the sentence in Part I of the Schedule, which is dated and signed by him and the JA, if any.(2)
(1. When several accused tried sequentially see RP 7(D). One sentence only, comprised of the punishment or punishments laid down in AA 41, 44 and its proviso, is to be awarded to cover all charges in all charge sheets on which accused found guilty. RP 48. As to sentences see AA 44, 133, 182, RP 46-50, 65, 118, 119(A), KR Can 308, 330, 563-566, Overseas RO 259, 2323, MML p 60, 757-759. As to sentences assigned for civil offences by the law of England see AA 41(5), MML p 120. Where accused already under sentence of imprisonment or detention see AA 44(18), 68(1), KR Can 564. 2. RP 52. As to release from arrest by Confirming Offr see KR Can 567. As to assembly and dispersal of record after trial see instrs on back of Convening Order.)

PRESIDENT OR JA WILL INITIAL ALL DELETIONS AND ALTERATIONS.

SCHEDULE.

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

Accused: C-64119 Pte (A/Cpl) George William FARRANCE, Nth Shore R, 10 CBR Bn

~~C-40238 Cpl Granville WILSON, QR of O, 10 CBR Bn~~

~~Acting Sgt Harold HOCKEY, QR of O, 10 CBR Bn~~

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

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

At present under sentence for N/A beginning on (date) N/A (1)

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

Time in confinement awaiting present trial—a total of 40 days, of which N.K. days were spent in hospital. (2)

(1. See RP 46(A) fn 2. Information should be found on MF B355 or AF B296 admitted in evidence under R2.)

Sentence Awarded by the Court:

To undergo detention for eighteen (18) months

(Sgd) N/A
Judge-Advocate, if any.

15-FEB-45
Date awarded.

(Sgd) Donald Mackenzie
President. (RP 45, 50.)

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

PART II. ~~ABSOLUTE~~ WHERE CONFIRMATION RESERVED. (AA 54(5), RP 48(2), MML p 760.)

Date

(Sgd)

Commanding

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

(For duties and powers see AA 54, 57, RP 37(O) fn 6, 46(A), 51-56, 120, MML pp 759-761, KR Can 567-577. Acquittals require no confirmation and cannot be revised: AA 54(3). Sending back finding or sentence for revision by Court: AA 54(2), RP 120(G). If not confirmed, accused may be tried again: AA 137, MML p 64. Minute of confirmation or non-confirmation may be altered before promulgation: RP 53, MML p 65. Quashing after promulgation: KR Can 573. Duties and powers of reviewing offrs: AA 57, 57A, RP 53A, 54. The Confirming Offr must sign here personally. AA 172 fn 1.)

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

Confirmed & the promulgation on parade

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

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

Date 17 FEB 45

(Sgd) (G S H Gostling) Brig

Commanding 2 CDN BASE REPT GP

Confirming Officer.

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

Accused.

C-64119 Pte (A/Cpl)
George William FARRANCE
Nth Shore R. 10 CBR

Date.

1330 hrs
20 Feb 45
on 10 CBR Bn parade

Signature of Offr.

J. M. Worthy Lt
Actg Adjt
10 CBR Bn

ALL DELETIONS AND ALTERATIONS WILL BE INITIALLED.

CHARGE SHEET

The accused, C-64119 Pte (A/Cpl) George William FARRANCE (N Shore R), C-80238 Cpl Granville WILSON (CH of O), and A-22435 Pte Harold HAGGERTY (CH of O), all on the strength of 42 Coy 10 CBR Bn., soldiers of the Canadian Army Overseas

are charged with

FIRST CHARGE
A.A. Sec 40

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

in that they

In the Field between 0130 hrs and 0330 hrs 5 Jan 45 were improperly in possession of a WD vehicle No CL-4269003 (Ford) 60 cwt, public property.

SECOND CHARGE
A.A. Sec 40

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

in that they

In the Field between 0130 hrs and 0330 hrs 5 Jan 45 whilst improperly in possession of a WD vehicle No CL-4269003 (Ford) 60 cwt, did improperly use government petrol.

THIRD CHARGE
A.A. Sec 18(4)

WHEN ON ACTIVE SERVICE STEALING PUBLIC PROPERTY

in that they

In the Field between 2330 hrs 4 Jan 45 and 0230 hrs 5 Jan 45 stole 25 blankets from 42 Coy Stores, public property.

FOURTH CHARGE
ALTERNATIVE
A.A. SEC 40

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

in that they

In the Field at 0130 hrs 5 Jan 45 were improperly in possession of 25 blankets, public property.

FIFTH CHARGE
A.A. Sec 15(1)

WHEN ON ACTIVE SERVICE ABSENTING THEMSELVES WITHOUT LEAVE

in that they

In the Field at 0130 hrs 5 Jan 45 absented themselves without leave until apprehended at 0330 hrs 5 Jan 45.

Total Absence: 2 hrs.

(J RUNCIE) Lt-Col
CO - 10 CBR Bn

In the Field
2 Feb 45

APPROVED ON BEHALF OF THE JUDGE ADVOCATE GENERAL
Pursuant to KR(Can) 540.

(E H Griffin) Capt
ADJA
HQ 2 Cdn Base Rft Gp

In the Field
13 Feb 45

TO BE TRIED BY FIELD GENERAL COURT MARTIAL

(G S H Gostling) Brig
Comd
2 Cdn Base Rft Gp

In the Field
13 Feb 45

FIELD GENERAL COURT-MARTIAL

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

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

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

ACCUSED.

Number.	(a) Prmnt R.	(b) Appmt, A/R or A/Appmt.	Ful Christian Names.	Surname.	Unit.
C-64119	Pte	(A/Cpl)	George William	FARRANCE,	Nth Shore R, 10 CBR Bn
C-80238	Cpl		Granville	WILSON,	CH of O, 10 CBR Bn
A-22435	Pte		Harold	HAGGERTY,	CH of O, 10 CBR Bn

CONVENING ORDER.

1. Whereas complaint has been made to me, the undersigned, that the person(s) named above as the accused, being subject to military law, has (have) committed the offence(s) set forth in the Charge Sheet(s) attached and on (date) 13 FEB 45 endorsed by me, (~~an officer of my staff for me~~), "To be tried by Field General Court-Martial".

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

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

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

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

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

5. ~~I also appoint as Judge Advocate the staff officer mentioned hereunder.~~

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

PRESIDENT.

Major (Rank.) D MacKENZIE, (Must be named. RP 106.) Essex Sect, I-9 List, att 3 Cdn NETD (Unit.)

MEMBERS.

Captain F A BAILLARGEON, Gen List, att Cdn Sec 1 Ech, HQ 21 Army Gp

Captain (Rank.) E B VAN DINE, (Named or detailed. RP 106.) RCASC, att Cdn Sec 1 Ech, HQ 21 Army Gp (Unit.)

~~WAITING MEMBER.~~

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

~~JUDGE-ADVOCATE.~~

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

On Active Service in the Fd

in BELGIUM (Country.)

Date 13 FEB 45

(Signed personally. RP 105 fn 2.)

Brigadier (Rank.)

(G S N Goetling)

Commanding 2 CDN BASE RFT GP

Convening Officer.

CONVENING OFFR WILL INITIAL ALL DELETIONS AND ALTERATIONS

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

4/38A CPA85 (To item of AZA3) AG/Y & S/1497 (4931)

Medical Officer's Certificate

I certify that I have this day examined C80238 Cpl. Wilson G.R.
10 C.B.K.Bn and in my opinion he is fit/unfit to undergo trial by
Court Martial.

Station Field
Date 15 Feb 45

N. Macneill Capt
Medical Officer
10 C.B.K.Bn
Unit

Medical Officers Certificate

I certify that I have this day examined C64119 Cpl Farrance GW.

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

Station Field

Date 15 Feb 45

W. Macmillan
Medical Officer

10 CWS K Bn
Unit

Medical Officer's Certificate

I certify that I have this day examined A22435 Pte Hagarty, H. 10 C/S K Bn and in my opinion he is fit/unfit to undergo trial by Court Martial.

Station Field

Date 15 Feb 45

N D Macaskill Capt
Medical Officer

10 C/S K Bn
Unit

1. Joint Trial

C - 64119 Pte (A/Cpl) Farrance G.W. - N Shore R
C - 80238 Cpl Wilson G - CH of O
A - 22435 Pte Haggarty H - CH of O.

D-2 Pte McPhail, W. J. shown on the Summary of Evidence is not available as a witness.

The Defence has no objection to this being a Joint Trial and does not feel that his case is prejudiced thereby.

D-3

1st Witness for The Prosecution

D-126481 Cpl Whitaker J - 14 CLWS - 10 Bn, 2 CBRG having been duly sworn states:

I am driver of Aux. Services Truck at 10 Bn. I recall night of 4 Jan 45. I recognize Cpls Wilson + Farrance. I parked my truck alongside 2 others on the parade square about 1030 p.m. right in front of the Legion office at Leopold Beke. I then immobilized it by removing a rotor arm on the starter. The no. of the truck is 426903. It is a 60 cwt Ford. It is covered with a tarp. Has a frame on it. Has a built-in cupboard inside. It has 2 stickers on the windshield and 2 - 8 inch transfers on the doors and 1 on the tail gate indicating that it is a Legion War Services truck. I went to bed. At 0230 hrs 5 Jan 45 Sgts Harrison and Francis woke me up.

By reason of what they told me I told them that there were Amp. Services stickers on the doors and tailgate. I told them the type of truck and the make. I told them where I left it parked. Next Day the truck at 0800 hrs. in the same spot I had parked it. The truck was not immobilized when I found it. The secret switch to the starter was open. This secret switch is fastened under the bridge sign on the right front side of the vehicle. That is all I noticed about the truck. I don't think I could say whether the truck had been moved that night or not. It was in the same spot and I know that I had immobilized it. I am in complete charge of the truck. I did not authorize anyone to use the truck that night. The rear of the truck was empty when I left it. The floor of the box was clean. I did not check the mileage on the truck the night before.

To Cross-examination:

RP 83.(B) complied with

2nd Witness for the Prosecution

K-4116 Pte Morelli J. - 45 Coy 10 Bn - 2 CBRG having been duly sworn states:

I recognize all the accused persons. Approx. 0130 hrs 5 Jan 45 I was Regt'l Police on duty at main gate of Leopold Barracks. The accused drove up to the gate with the Amn. Services truck. I recognized the truck by the markings. Cpl Farrance was driving the truck. When he come to the gate the truck stopped. Cpls Wilson and Farrance got out. Then I walked around to the back of the truck and saw Pte. Haggerty laying down on some blankets in the truck. I could see in the truck because an overhead light in the driveway shone about ½ way in the back of truck. I could not identify Pte Haggerty when he was in the truck but I could identify him when he got out of the truck. The truck was stopped there about 10 minutes. Cpl Farrance finally got it started. Then again. I did talk with them. We cracked a few jokes. I knew the Cpl + Pte belonged to CHQ 10 but I did not know what unit Cpl Farrance belonged to. I asked Cpl Farrance where he was going and he said he was going to a dance. I asked him where he was going with the blankets and he said they had been there for a week or more. I told Cpl Farrance he should

have a shot to take blankets from the gate. I can't tell how many blankets were in the truck. They were spread out flat. They were folded neatly. Right between the two bunkers on each side they were piled.

Cross-examination:

I saw Haggerty get out of the back of the truck. I was standing at the rear of the truck. They were "fiddling" around with the truck for awhile and then they pushed it through the gate. The archway is about 20 yards long at Leopold Barracks gateway. The truck was at the gate. The radiator was about level with the gate. The gate was open.

By the Court

I estimate this courtroom to be 42 feet long. The blankets were grey regular Army issue blankets.

RP 83(B) complied with.

2 Witnesses for the Prosecution

K-40916 Sgt Morrison, G.A., 10 Bn
DCBRS having been duly sworn states.

I recognize all the accused persons. I was Bn Ord. Sgt from Rev 4 Jan to Rev 5 Jan 45. ~~Sgt Francis~~ SSM at approx. 0145 5 Jan I was awakened by Sgt Francis. I got up and as a result of what he said I accompanied him through the Coy lines looking for Cpl Wilson and Cpl Farrance. I could not find them. We checked the area thoroughly. We could not find them. We checked where the Asst. Services park their veh and also the veh park. We were not able to locate the Asst Ser. truck.

No Cross-examination:

RP 83(B) complied with

SSM

4 Witness for the Prosecution

1:22849 Sgt Francis V.R. - 10 Bn 2 CBRA having been duly sworn states:

I recognize all three accused persons. On night of 4-5 Jan 45 I assisted in the search for all three. They could not be located. I also accompanied Sgt Morrison in the area looking for a veh. Cpl Wilson is in our Coy. I know him before this occasion. Cpl Wilson was an escort for Cpl Farrance on the evening of 4 Jan 45. Cpl Farrance was under close arrest. I searched the area where they should have been and they could not be located.

No cross examination:

By the Court:

On information received from a pte I also searched for Pte Haggerty. I was not at the gate when the truck returned. As a result of our search in the veh park and area we could not find the Amb Ser. truck. We made the search approx 0130 hrs. 5 Jan 45.

RP 82 (B) complied with.

Witness for the Prosecution

C-122549 Pte Crone, G.F. (CIC) 10 Bn. 2 CBRG having been duly sworn states:

I know the three accused persons. On 5 Jan 45 at appx 0130 hrs. I was on duty at R.P. on the Gate at Leopold Barracks I was given orders by the Orderly Officer to apprehend the Aust Services truck which was out of barracks in charge of Cpl Farrance. I did that at 0330 hrs 5 Jan 45 on the 6th returning to barracks with Cpl Farrance driving with Pte Wilson and Pte Haggerty. I placed the three men under close arrest. All three men were riding in the front of the truck. On return of the truck, the question of articles in the back of the truck was brought up. I investigated and there was nothing in the back of the truck. At the time I knew Cpl Farrance only by name. I did not know the other 2. The three accused are the three men that I apprehended. I did note Cpl Farrance's condition. He had been drinking. I ~~did~~ not walked ahead

of him into the R.P. Office. I saw him get out of the truck. He was not awkward in getting out of the truck. He was not unsteady on his feet when I saw him. I talked to him. I could understand what he told me. He had no trouble in answering any questions I asked. I asked him if he'd been out in the truck. He said yes. I did not ask him any questions about blankets.

No cross examination.

By the Court. Cpl Wilson + Pte Haggerty both went into the Guard Room with us. They offered no argument. I do not know if they had been drinking.

R.P. 83 (B) complied with →

6th Witness for the Prosecution

2

B-46477 CAMS Richardson RH. 10 Bn 2 CBRG having been duly sworn states:

I am CAMS of 42 Coy 10 Bn. I recognize all three accused. Two are in my coy. They have all been in my Stores at one time or another. Cpl Farrance was inside my Stores for some clothing while in detention on a previous case. Cpl. Wilson was in my old storeroom. I can't say if he has been in the present storeroom. Pte Haggerty has been in my present storeroom. ~~The~~ The Blankets were piled 2 ft. from the door on the left hand side going into my storeroom. I piled blankets there from the start. Cpl Farrance & Pte Haggerty have been in the storeroom since I piled them there. I couldn't say whether Cpl Wilson has been in. I moved into my present storeroom between Xmas & New Years. Between 2230 hrs 4 Jan and 0630 hrs 5 Jan I had ~~some~~ the approx 25 blankets stolen from my storeroom. The majority were grey blankets. There might have been a

few brown or dark blankets. They were regular army issue blankets. This storeroom is normally kept locked by a door lock and either I or my storeman have a key. My storeman was in Hosp and I slept in my storeroom on night of 4-5 Jan. There is a room partitioned off and he sleeps there. I locked the door from the inside and turned the key part way. From the hallway leading into the storeroom is a ventilator about 9" x 12" and 12" in length (the width of the wall). It is covered by a metal cover on the outside that just fits in a slot. The blankets were piled in front of the ventilator opening in the storeroom. The pile of blankets from the floor was approx 3½' ~~from the floor~~. The ventilator ~~ventilator~~ is approx 2' from the floor. To take blankets, all that had to be done was to remove the metal from the ventilator and to pull a blanket at a time from the pile through the ventilator. When I saw the pile of blankets the next a.m. the pile was a few inches below the ventilator shaft.

I heard no noise or commotion whatsoever during the night. I have no knowledge of who took the blankets.

Cross examination:

I have no reason to suspect these three accused persons. I'm just stating facts re the disappearance. This ventilator is apparent from the inside of the room. The blankets were piled there when the metal cover was on. Anyone inside the storeroom could see the ventilator if the pile of blankets was below the level of the ventilator.

By the court:

The height of the pile of blankets varied from day to day. On evening of 4th Jan there were 35 or 40 blankets in the pile. Next a.m. there was approx 15. The figure of 25 missing is approx. I went to bed 2230 hrs 4 Jan. I noticed the blankets & I had served in-coming Hosp. cases. I remember the size of the pile. I had not lost blankets before from my storeroom but 30 or 40 a day had been going out of barracks. We keep no record of blankets on hand from day to day.

The next a.m the pile was still neat.

RP 83(B) complied with.

Pros Witness for the Prosecution

C-80238 Cpl Wilson G. C Hqs 10 Bn - 2 CBRs having been duly sworn is examined by the Prosecution.

This witness is warned that he has the privilege of not answering any question which might in his opinion incriminate his own personal defence. (MML 95)

2 — a member of 42 Coy 10 Bn. I am on strength there. I was on strength on night 4—5 Jan 45. I know the other 2 accused persons. On afternoon of 4 Jan Cpl Farrand and myself started drinking cognac in barracks. One bottle followed another until such time as I myself went into a mental blank. We started between 1630 and 1700 hrs. I can say that between 2 of us we drank 3 bottles. There was a drink given out of each bottle to a man in the area. I have a vague idea but no recollection of ~~having and something~~ that evening. I don't know what time I got back

that night. Cpl Farrance and I got in an argument over our Army Service. We fought a battle right up the Coast of France. That is one highlight that stands out in the evening. But nothing material to this incident stands out. I don't know how long I drank indoors before leaving Leopold barracks.

No Cross examination:

By the Court

The first thing I remembered was at breakfast hour when they knocked on the door of the Guard Room at about 0700 hrs. Pte Haggerty was not with us during the drinking period.

RP 83(B) complied with.

8th Witness for the Prosecution

A-22435 Pte Haggerty H – C Hof O 10 Bn – 2 CBRB having been duly sworn states:

{ This witness is warned that he has the privilege of not answering any question which might incriminate his own defence. M A L 95

I am on strength of 42 Coy 10 Bn 2 CBRB. I recall night of 4-5 Jan. 45. I noticed 3 Cpls in the room drinking. They are

the 2 Accused Cpls. It was in 42 Coy lines in Leopold Bcks. This was afternoon. I took no part in that. I came into the picture between 2400 and 0130 hrs 4/5 Jan 45. I was in the lavatory in the main bldg. and as I ~~watched~~ saw walked into the archway from the lavatory a 60 cwt truck was stalled in the archway. I walked around to the front of the truck and asked the fellows there if I could give them a hand. They decided to push the truck and I helped them push the truck approx. 1 block. It still wasn't started. The driver ~~attempted~~ tried to start it again from the cab instead of pushing it. He succeeded. One of the Cpls asked me if I would like to go for a ride. I said "sure". I got into the front. We drove around to 4 or 5 different cafes and had a few drinks in each. On returning to Leopold I was brought into main guard room and placed under close arrest. I saw no blankets in the back of the truck. I did not see in the back of the truck. I rode back to barracks in the front ~~cab~~ of the truck. Cpl. Farrance drove. I was never in the back of the truck. I was

not in the truck when it was driven from its parking place to the Archway. I remember walking with Cpl Fairhurst into cafes. He could manage OK. I talked with him. I could understand him. He appeared to be in a very happy mood. He seemed to handle the veh all right. I was with the truck all the time except when 2nd in the cafes. All 3 of us went into cafes together. During those ~~that~~ 3rd times the truck was unattended outside. We went to 5 cafes at the most. We visited them from 0130 to 0330. We had something to drink in each.

No Cross examination.

By the court.

The truck was unattended at one time while we had 3 drinks apiece in one cafe. We were in that cafe approx 25 minutes. All three of us were together all the time from the time we left until we returned to the Barracks.

RP 83(B) complied with

SMV

Motion by Defence

I would like to submit that in the case of Cpl Farrance and Cpl Wilson that the 3rd + 4th charges be dismissed, ~~In the case of Pte~~ Thy and that the trial so far as they are concerned proceed on 1st + 2nd charge. In the case of Pte Haggerty that the 1st 2nd 3rd 4th charges be dismissed. This motion is made on the grounds that the prosecution has not est a prima facie case.

Reply by the Prosecution:

In reply to the motion re the cases against the Cpls. There is evidence before the court that blankets were seen in the rear of the truck which the 2 Cpls + Haggerty took from the premises that evening. They were certainly in improper possession of them. Re the 3rd charge perhaps I have not satisfied yr/s on question of intent but 1st of all we have evidence of CAMS who describes where blankets were taken from. He also states Cpl Farrance + Pte Haggerty had been in his stores while they were piled

there. All 3 men are attd to 42 Coy. On that night blankets are stolen from 41 Coy stores. Later these 3 have the area in the rear of which a truck are blankets, army issue. There is evidence to put them on their defence. The prosecution have est a prima facie case on 3rd and 4th charges. Especially in a joint trial it is more so. The 2nd motion is a motion which at this stage would aquit Haggarty of 1st 4 charges. If you believe him then you can believe his part was from archway on. If that is so he is liable under 1st + 2nd charge. I suggest both motions be disallowed.

D-6

1st witness for Defence

C-64119 Pte (A/Cpl) Fonrance G.W. - N Shore R 10 Bn - 2 CBRG having been duly sworn states:

~~To be frank I couldn't accom~~ S.W.

On afternoon of 4 Jan 45 Cpl Wilson and I sat down to do a little drinking. The reason I wanted to drink was I had been under a heavy strain for the preceding 6 weeks. I had worked very hard to attain a Supervisorship with the Cdn Legion. Through my own stupidity on Xmas day I was sent to 10 Bn. under close arrest. I was sitting around barracks for a week when the New Year rolled around.

Time was heavy and I wanted to alleviate the situation. I suggested I would like a bottle of cognac or whatever I could get to drink and I asked one of the chaps in the room if he would go out and get me a bottle. He did. Eventually I know I had paid for 4 bottles. I remember opening the 4th bottle. At the time, appox 2100 hrs, all the chaps prepared to go to bed. It was sometime after that Cpl Wilson & I were discussing our length of service. I remember I jokingly remarked to Cpl. Wilson that he had not come in on D-Day. Cpl Wilson was going to break the bottle over my head for accusing me of such. I don't know what time it was then but I believe I suggested we go out and get another drink. I remember going into 2 Cafes and I remember leaving a 3rd Cafe. I can't recall anything more until I awakened in the guard room at breakfast time wondering how I got there. Have been in the Army since June 1940. I came into France on D-Day. I was at 10 Bn Xmas. I wasn't wounded. I was told that my category was too low to return to the unit.

I would like to return to my unit.

Cross-examination:

I remember going to a cafe in a veh. I can't remember getting into a veh. I remember when we came out of the 1st cafe the Can Legion truck was standing there. I don't remember being concerned in having difficulty starting the veh. Cpl Wilson & Pte Haggerty were with me when we came out of The 2nd Cafe. I don't remember driving the truck down there. If someone said I drove it there I wouldn't deny it. I was trying hard to get into the Legion work. I was working for the Legion in Ghent at that time. I had driven this truck before. I know how it was immobilized. When I came out of the cafe the truck I got into was the Unit Services Truck. I had no permission to take the truck. I was under close arrest. I recall nothing about blankets except blankets out of my own kit. I know nothing whatever about blankets in the truck. I did not know about the new storeroom. I did not know where Coy QM Stores are. The Coy had been changed around. I did not know there was a room like the QM stores described here today.

It is possible that I ~~can~~ might have gone down to that room. Cpl Wilson and I and the chaps who went to get the bottle for me each time were the only ones that did the drinking. That chaps is now dead. He died in the barrack room.

RP 83(B) complied with.

2nd Witness for the Defence

C-8238 Cpl Wilson G is recalled and examined by the Defending Offr

I have been in army approx 3 years. I came to France on D Day. I was wounded in the Falais Pocket and evacuated to U.K. I am eligible to return to my unit. I have been after the Draft Sgt to get me out of Ghent and back up to my unit. Returned from UK the latter part of October.

RP 83(B) complied with.

3rd Witness for the Defence

A-22435 Pte Haggerty H is recalled & examined by the Defending Offr.

I have been in the army since 27 June 40. I landed in France a month after D-Day as a rft. I served with my Bn in action. I was wounded in action. I was in Hosp for 17 days & convalescent for 2 weeks. Returned to Ghent around the end of October.

I am eligible as a rft for the Bn. I desire to return to the Bn. I am 21 years old.

RP 83(B) complied with.

Defending Offrs closing Address:

There are 3 soldiers before you. They are from the best division in the Cdn Army. You will bear this in mind and have a sympathetic outlook. Our real quarrel is not with the 1st 2 charges. You are reasonable men and will find justice done. The 3rd charge deals with theft and 4th with improper possession. No witness said anything about 25 blankets. No witness saw 25 disappear from QM Stores. As many as 40 had been disappearing in these barracks daily. It was a common thing and no records were kept in QM Stores. Two witnesses said they saw blankets in the back of the lorry. They knew nothing about them. All the men were climbing in the front of the lorry. They knew not what was in the back of the lorry. My remarks re the 4th charge are the same. It is difficult to prove that items were there improperly. In military life people find odd things in their kits, billets etc. You as a Court take a grave responsibility in convicting under these charges. The defence will file a Petition if a conviction is found.

Those remarks are re the Cpls. Now we come to Haggerty. He is very young. We admire his spunk in serving his country. He is the innocent bystander and I ask you to dismiss on all 4 counts.

Cpl from NB Regt is V-I + collapsed in battle with heart condition.
Cpl from CH of O wears a wound stripe and wants to get back. So does the Pte.

You must weigh, as soldiers, what must be the least possible penalty and what must be done to win the war.

To sum up. As far as 2 Cpls are concerned I ask for dismissal on 3 + 4 charges. I ask you to dismiss on all 4 counts for the Pte.

Closing address ~~Reply~~ by the Prosecution:

We must return to the facts as proven at the trial today. I feel that in view of 1st 2 charges for Cpls. the Defence leaves it up to you. It is virtually a plea of guilty; re 3 and 4 charges and the Cpls. What is their defence? It is one of drunkeness. They must satisfy the court the nature of the act they were

doing and the consequences. The evidence here today bears that out. Pte Haggerty is most fair and his words do not indicate that state of drunkenness. Neither do any of the other witnesses. Contrarily we find 3 persons leaving Leopold Bdes. in a truck with blankets in the rear. They were folded. Three of them spend a lot of time dining around, visiting cafes and they return without the blankets. These are the facts. The accused all belonged to 4th Coy. The blankets are missing from there and a truck with blankets leaves the Barracks driven by the accused. A special finding can be made re the actual number of blankets missing. The 3rd charge - theft - the evidence is not too strong. Generally on this trial. Not story of any one witness that makes up the Pros. case. It is complete story that is presented here. A court must act on the balance of probabilities. Taking all circumstances into consideration, what most probably happened. The position of Pte Haggerty. You may believe him and disbelieve the guard on the gate. He entered the scene when? According to conflicting

evidence. S/t. is 0130. Pte Haggerty left the 2 Cpls above the truck and takes part in the evening's affair from there on. I can't see how he can claim innocence of an act at such an hr. in the a.m. He knew what was going on and he chose to take part in it. 1st + 2nd charges against Haggerty cannot be dismissed. If you disbelieve the guard at the gate then you must believe Haggerty and his story about not being in the back of the truck. There is a perfectly sound case here against all 3 on 1st + 2nd charge and on the 3rd charge. In case of Cpls a sound case on either 3 or 4 charges depending on which witness you believe.

EBL

The Defence does not desire a reading of the Summary of Evidence in the last charge (5th Charge) on which all have pleaded guilty.

F-3 Pleas in Mitigation.

NIL

Howard Mackenzie
Major
President.

Exc

ARMY FORM B.200.

Statement as to Character and Particulars of Service of Accused.

Number.	*Rank.*	*Name.*	*Regiment (or as the case may be).*
C 64119	Pte (A/Cpl)	FARRANCE C W	10 Cdn Base Rft Bn

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

NOTE.—At a trial by field general court martial this summary may be compiled from the field conduct sheet.
The conduct sheet(s) mentioned should be produced in court with this statement but not annexed to the proceedings.

† See para. 677, K.R., 1940.

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

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

	* Within last 12 months.	*Since Enlistment.
For	Original MFW 6 not available times	times.
For	times	times. CWA
For	times	times. CWA
For	times	times. CWA
For	times	times. CWA

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

or

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

~~2. The accused has not been previously convicted~~ or CWA

~~Previous convictions† of the accused by a court martial or a civil court, summary awards under section 47 of the Army Act, and dispensations with trial under section 73 of the Army Act, are set out in the schedule annexed to this statement.~~ CWA

3. The accused is not under sentence at the present time, ~~or The accused at the present time is under sentence of~~ CWA

~~beginning on the day of~~ CWA

4. The accused has been in confinement, awaiting trial on the present charges, for nil days in civil custody, and 460 R3h days in military custody, making a total of 460 R3h days, of which nil days were spent in hospital.

5. The present age of the accused according to his ~~attestation paper~~ record of service is 34 yrs 7 mos 19 days CWA

6. The date of his ~~attestation~~ CWA specified in his ~~attestation paper~~ record of service is 5 May 42 CWA R3h

7. The service which the accused is allowed to reckon towards discharge or transfer to the reserve is 3 yrs 8 mos 29 days

8. The accused is entitled to deferred pay or gratuity in respect of 3 yrs 8 mos 29 days service.

9. The accused is entitled to reckon 2 yrs 8 mos 29 days service for the purpose of determining his pension, etc.

10. The accused is in possession of, ~~or entitled to, no military decoration or military award (or is in possession of or entitled to (state any military decoration or award)).~~ CVSM & Clasp CWA

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

~~rank of~~ CWA

~~12. (In the case of an officer.) The accused holds in the army the rank of , dated~~ CWA R3h

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

(7[illegible]) Wt.44068/1[illegible] 40,000 10/43 A. & R. W. Ltd. Op.498
(38[illegible]) Wt.8[illegible]/1489 12,000 8/46 " "

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

No. _____ Rank _____ Name _____ of _____ Regiment (or as the case may be).

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

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

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

Signed this Ninth day of February 1918.

Capt

In the rank of _____ years

In the rank of _____ years

In the rank of _____ years

(INSTRUCTION—If any matter in any of the above pre-requisite cannot be stated from the regimental book, the paragraph must remain blank, except that in the case of a trial by field general court-martial the information may be collected from such sources as are available and the paragraph completed accordingly.)

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

Date of Promotion.

T. O. S. - 22 Oct 44

No C-6411 Name FARRANCE, G.W. | Sqn, Battery, or Company | Corps CIC | Date of enlistment | GC Badges | Service or Proficiency Pay | MFM 6 (AFB 122) 40/P&S/1376 (3435)

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

Place	Date of offence	Rank	Cases of drunkenness	OFFENCE	Names of Witnesses	Punishment awarded	Date of award or of order dispensing with trial	By whom awarded	Remarks
				(Copy Sheet Only)					

(PTO)

ARMY FORM B.290.

Statement as to Character and Particulars of Service of Accused.

Number.	*Rank.*	*Name.*	*Regiment (or as the case may be).*
C 30238	Cpl	WILSON G	10 Cdn Base Rft Dn

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

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

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

† See para. 677, K.R., 1940.

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

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

	* Within last 12 months.	*Since Enlistment.
For	Original MFM 6 not available times	times.
For	times	times.
For	times	times.
For	times	times.
For	times	times.

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

or

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

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

~~Previous convictions† of the accused by a court martial or a civil court, summary awards under section 47 Army Act, and dispensations with trial under section 72 of the Army Act, are set out in the schedule annexed to this statement.~~ nil

3. The accused is not under sentence at the present time, ~~or The accused at the present time is under sentence~~ nil

~~beginning on the day of~~ nil

4. The accused has been in confinement, awaiting trial on the present charges, for nil days in civil custody, and 40 RTN days in military custody, making a total of 40 RTN days, of which nil days were spent in hospital.

5. The present age of the accused according to his ~~attestation paper~~ record of service is 27 yrs 3 mos 25 days

6. The date of his ~~attestation~~ specified in his ~~attestation paper~~ record of service is 21 May 42

7. The service which the accused is allowed to reckon towards discharge or transfer to the reserve is 2 yrs 8 mos 13 days

8. The accused is entitled to deferred pay or gratuity in respect of 2 yrs 8 mos 13 days service.

9. The accused is entitled to reckon 2 yrs 8 mos 13 days service for the purpose of determining his pension, etc.

10. The accused is in possession of, ~~or entitled to, no military decoration or military award (or is in possession of or entitled to (state any military decoration or award)).~~ CVSM & Clasp

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

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

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

[illegible] W1.44888/1788 80,000 10/42 A.& E.W.Ltd. Gp.698
[illegible] W1.44888/1788 10,000 8/44

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

No. _____ Rank _____ Name _____ of _____ Regiment (or as the case may be).

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

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

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

Signed this _____ day of February

Capt

In the rank of _____ years _____

In the rank of _____ years _____

In the rank of _____ years _____

In the rank of _____

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

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

Date of Promotion.

No C-80238 Name WILSON, G. | Sqn, Battery or Company: T. C. S. - 11 Nov 44 | Corps CIC | Date of enlistment: 21/5/42 | GC Badges | Service or Proficiency Pay | MFM 6 (AFB 122) 40/P&S/136 (3428)

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

Place	Date of offence	Rank	Cases of drunkenness	OFFENCE	Names of Witnesses	Punishment awarded	Date of award or of order dispensing with trial	By whom awarded	Remarks
				TEMPORARY SHEET					

(PTO)

E & O

ARMY FORM B.2067

Statement as to Character and Particulars of Service of Accused.

Number.	*Rank.*	*Name.*	*Regiment (or as the case may be).*
A 22438	Pte	HAGERTY H	10 Cdn Base Rft Bn

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

NOTE.—At a trial by field general court martial this summary may be compiled from the field conduct sheet. The conduct sheet(s) mentioned should be produced in court with this statement but not annexed to the proceedings.

† See para. 877, K.R., 1940.

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

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

	* Within last 12 months.		*Since Enlistment.	
For	A. A. Sec 15 (1)	times	6	times.
For	A. A. Sec 9 (2)	times	1	times.
For	A. A. Sec 40	times	2	times.
For	A. A. Sec 24 (2)	times	2	times.
For		times		times.

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

or

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

2. The accused has not been previously convicted, or

~~Previous convictions† of the accused by a court martial or a civil court, summary awards under section 47 of the Army Act, and dispensations with trial under section 73 of the Army Act, are set out in the schedule annexed to this statement.~~ nil

3. The accused is not under sentence at the present time, ~~or The accused at the present time is under sentence~~ nil

~~beginning on the day of~~

4. The accused has been in confinement, awaiting trial on the present charges, for nil days in civil custody, and ~~40 (24h)~~ days in military custody, making a total of ~~40 (24h)~~ days, of which nil days were spent in hospital.

5. The present age of the accused according to his ~~attestation paper~~ record of service is 22 yrs 3 mos 4 days

6. The date of his ~~attestation~~ attestation specified in his ~~attestation paper~~ record of service is 27 Jan 40

7. The service which the accused is allowed to reckon towards discharge or transfer to the reserve 4 yrs 7 mos 6 dys

8. The accused is entitled to deferred pay or gratuity in respect of 4 yrs 7 mos 6 dys service.

9. The accused is entitled to reckon 4 yrs 7 mos 6 dys service for the purpose of determining his pension, etc.

10. The accused is in possession of, ~~or entitled to, no military decoration or military award (or is in possession of, or entitled to (state any military decoration or award)).~~ CVSM & Clasp

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

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

(7[illegible]) Wt.34566/1720 30,000 10.41 A.S.F.W.Ltd. Gp.698
(2[illegible]) Wt.42582/1430 12,000 9.42 " "

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

No. ..... Rank ..... Name ..... of ..... Regiment (or as the case may be).

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

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

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

Signed this ninth day of February 1945

W W Rutherford Capt

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

Date of Promotion.

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

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

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

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

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

No. A-22435 Name HAGARTY, H.F. Sqn, Battery, or Company — Corps CIC — Date of enlistment 27-6-40 — GC Badges — Service or Proficiency Pay — MFM 6 (AFB 122) 40/P25/136 (3438)

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

Place	Date of offence	Rank	Cases of drunkenness	OFFENCE	Names of Witnesses	Punishment awarded	Date of award or of order dispensing with trial	By whom awarded	Remarks
~~Attached No1 C.R. (R)T.C. C.A.(A) Camp Borden from Besex Scottish Depot Bft. 18 July 41 D.C. 180 19 July 40~~ Previous sheet destroyed on Completion 6 months service 27-12-40 Entries Nil (F.L.L.)									
				Nil.					
Hamilton	2-9-41	Pte.		The accused is charged with A.W.L. from 0800hrs 2-9-41 till 1700 hrs 2-9-41 Total absence) 9 hrs A.A. Sec 15(1) Open Arrest.	Sjt. Cullen,B	4 Days C.B.	(3-9-41 [illegible].	Major J.H. Duthie.	1 Days Pay F.R.I. (149)(14
Hamilton	6-10-41	Pte.		A.W.L. from 1600hrs 16-10-41 till 1330hrs 17-10-41 Total absence 21 hrs 30 mins A. A. Sec 15 Para 1.	Cpl. Bowden	4 Days C.B.	18-10-41	Major J.H. Duthie.	1 Days Pay F.R.I. 149(1a

(PTO)

Place	Date of offence	Rank	Cases of drunkenness	OFFENCE	Names of Witnesses	Punishment awarded	Date of award or of order dispensing with trial	By whom awarded	Remarks
Hamilton. Ont.	12-9-42	Pte.		The a ccused is charged with disobeying an order in that he at Hamilton on the 12th Sept. when ordered to go to the Officer's Mess to wash dishes"Replied/I will not wash dishes in the Officer's Mess. Close Arrest A.A.Sec9(2)	CSM Callaghan J. Sjt. Eggett,G Pte.Lehahan	10 Days C.B.	14-9-42	Major J.H. Duthie	
Hamilton	16-11-42	Pte.		The a ccused is charged with absenting himself without leave from the expiration of his pass 0800hrs until 1715 hrs 16-11-42 Totaal absence (9hrs.15 Mins.)	Sjt. Bowden W. Pte. Coutts	4 Days C.B.	18-11-42	MajorJH. Duthie	Forfeits 1 Days Pay F.R.I. (149)(1a)
Hamilton	25-1-43			Certified last entry to date.					
Camp Borden	22-3-43	Pte.		A.A. Sec 40 COND. TO THE PREJ. Unshaven on parade.	Pte. Bremner C.	3 Days C.B.	23 Mar 43	Major C.A. DADDS.	

No A-22435 Name HAGARTY, H.F. Sqn, Battery, or Company — Corps C.I.C. — Date of enlistment 27 Jun 40 — GC Badges — Service or Proficiency Pay — MFM 5 (AFB 122) 40/P&S/136,(3438)

Date of last entry in Company Conduct Sheet 22 Mar 43 — No and date of last drunk — Period not reckoning towards freedom from extra fine — Sheet No 2. — Signature OC Company, etc — Character

Place	Date of offence	Rank	Cases of drunkenness	OFFENCE	Names of Witnesses	Punishment awarded	Date of award or of order dispensing with trial	By whom awarded	Remarks
A-11 C.I.T.C.C.A.	29Mar 43	Pte.		A.A.Sec 24 (2) LOSING BY NEGLECT HIS CLOTHING EQUIPMENT, AND REGIMENTAL NECESSARIES. I.E. 1 Pr. Boots Ankle valued at $1.36 (Open Arrest)	C.Q.M.S. Gray, J.	ADMONISHED	30Mar 43	Major C.A. Da dds	Stoppages of pay to the amount of $ 1.36.
Camp Borden	14-4-43	Pte.		AWL from 17-4-43 at 12 --hrs until 0215hrs 27-4-43 Total absence 9 days 14 hrs 15 mins. A.A.Sec 15(19. Close arrest.	Cpl. Bust 15L/Cpl Young	10 Days pay F.R.I.149(2)	27-4-43	(H.R. Case Lt-Col.	10 Days pay F.R.I.149(1a)

(P.T.O.)

Place	Date of offence	Rank	Cases of drunkenness	OFFENCE	Names of Witnesses	Punishment awarded	Date of award or of order dispensing with trial	By whom awarded	Remarks
Field	26-11-43			WOAS Cond. to the pred. etc. in tha t he appeared on parade unshaved after being duly warned. A. A. Sec 40.					
Field	16Apr 44	Pte.		A. A. Sec 15(10 WOAS AWL from 2359 hrs 16-4-44 until 0730hrs 17 Apr. 44. (Time absent 7 hrs. 31 mins.)	(Sjt. Wiseman Cpl. Lyle R. Documentary)	5 Days C.B. 7 Days Pay Forf. 7 Days pay F.R.&I 149(1)(a)	17 Apr.44	P. Palmer Major	

No A-22435 Name HAGARTY, H.F. Sqn, Battery, or Company | Corps C.I.C.(M.G.) | Date of enlistment 27-6-40 | GC Badges | Service or Proficiency Pay | MFM 6 (AFB 122) 40/PAS/136 (3438)

Date of last entry in Company Conduct Sheet | No and date of last drunk | Period not reckoning towards freedom from extra fine | Sheet No 3. | Signature OC Company, etc | Character

Place	Date of offence	Rank	Cases of drunkenness	OFFENCE	Names of Witnesses	Punishment awarded	Date of award or of order dispensing with trial	By whom awarded	Remarks
Field	31-10-44	Pte.		A.A. Sec 15(1) AWL from 0515 hrs 31 Oct 44 until 1030hrs 31 Oct 44 Absent 5 hrs 15 Mins.	Sjt.Francis	14 Days C.B.	1 Nov44	Lt-Col. A.T.Law.	

Certified true copy
[illegible] Capt
Officer Regimental Books

(PTO)

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

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

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

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

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

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

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

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

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

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

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

President to accused: Do you wish to give evidence yourself as a witness, make a statement, or do neither? Ans.....Do you intend to call witnesses on your behalf? Ans.....Are they witnesses as to character only? Ans.....

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

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

(1. RP 114, 115, 116. For procedure see Notes on back of Convening Order, CF A05. Evidence for accused as to his character should, if in his interest, be given before the finding. See RP 46(A) fn 1, 86(C). Note the further opportunity in para E1 of Record Form E. Record per Notes addresses, statement, evidence and any summing up by the JA under RP 42, 103(e).)

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

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

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

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

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

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

RECORD FORM E—PROCEEDINGS ON CONVICTION BEFORE SENTENCE.

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

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

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

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

E3. President to accused: Do you wish to address the Court on the Statement(s) and Conduct Sheet(s), and in mitigation of punishment?(1) Ans.....(2)

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

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

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

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

(1. When several accused tried separately see RP 71 (D). One sentence only, comprised of the punishment or punishments laid down in AA 41, 44 and its proviso, is to be awarded to caver all charges in all charge sheets on which accused found guilty. RP 48. As to sentences see AA 44, 138, 182, RP 46-50, 69, 118, 119(A), KR Can 308, 320, 563-566, Overseas RO 309, 2323, MML p 60, 757-759. As to sentences assigned for civil offences by the law of England see AA 41(5), MML p 130. When accused already under sentence of imprisonment or detention see AA 44(16), 68(1), KR Can 564. 2. RP 50. As to release from arrest by Confirming Offr see KR Can 567. As to assembly and disposal of record after trial see instrs on back of Convening Order.)

PRESIDENT OR JA WILL INITIAL ALL DELETIONS AND ALTERATIONS.

SCHEDULE.

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

Accused: A-22435 Pte HAROLD HAGGERTY, CH of O, 10 CBR Bn.

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

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

At present under sentence for N/A beginning on (date) N/A (1)

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

Time in confinement awaiting present trial—a total of 40 days, of which Nil days were spent in hospital.(1)

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

Sentence Awarded by the Court:

To undergo detention for one (1) year

(Sgd) N/A Judge-Advocate, if any. 15 Feb 45 Date awarded. (Sgd) Donald Mackenzie President. (RP 45, 50.) Major

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

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

Date (Sgd) Commanding

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

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

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

Confirmed & to be promulgated on the parade

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

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

(Sgd) (G E N Gostling) Brig

Date 11 FEB 45

Commanding 2 CDN BASE RPT GP

Confirming Officer.

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

Accused.	Date.	Signature of Offr.
A-22435 Pte Harold HAGGERTY CH of O 10 CBR	1330 hrs 20 Feb 45 On 10 CBR parade	Jas. Whitty Lt and Adjt 10 CBR

ALL DELETIONS AND ALTERATIONS WILL BE INITIALLED.

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

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

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

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

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

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

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

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

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

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

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

President to accused: Do you wish to give evidence yourself as a witness, make a statement, or do neither? Do you intend to call witnesses on your behalf?

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

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

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

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

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

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

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

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

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

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

RECORD FORM E—PROCEEDINGS ON CONVICTION BEFORE SENTENCE.

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

Ans.....

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

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

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

E3. President to accused: Do you wish to address the Court on the Statement(s) and Conduct Sheet(s), and in mitigation of punishment?(1) Ans.....(2)

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

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

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

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

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

PRESIDENT OR JA WILL INITIAL ALL DELETIONS AND ALTERATIONS.

SCHEDULE.

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

Accused : C 80238 Cpl GRANVILLE WILSON, C H of O, 10 CBRBN.

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

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

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

Time in confinement awaiting present trial—a total of 40 days, of which Nil days were spent in hospital.(1)
(1. See RP 46(A) fn 2. Information should be found on MF B355 or AF B296 admissible in evidence under E2.)

Sentence Awarded by the Court :

To be reduced to the ranks and to undergo detention for eighteen (18) months

(Sgd) N/A Judge-Advocate, if any. 15 Feb 45 Date awarded. (Sgd) Donald Mackenzie President. (RP 45, 50.) Major

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

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

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

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

(For duties and powers see AA 54, 57, RP 37(D) fn 6, 46(A), 51-56, 120, MML pp 759-761, KR Con 567-577. Acquittals require confirmation and cannot be revised : AA 54(3). Sending back finding or sentence for revision by Court : AA 54(2), RP 120(G). If not confirmed, accused may be tried again : AA 157, MML p 64. Minute of confirmation or non-confirmation may be altered before promulgation : RP 53, MML p 65. Quashing after promulgation : KR Con 573. Duties and powers of reviewing offrs : AA 57, 57A, RP 53A, 54. The Confirming Offr must sign here personally. AA 172 fn 1.)

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

Confirmed & the promulgation & be proceeded

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

(Sgd) (G H N Gostling) Brig
Commanding 2 CDN BASE RFT GP
Confirming Officer.

Date 17 FEB 45

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

Accused.	Date.	Signature of Offr.
C-80238 Cpl Granville WILSON C H of O 10 CBRBn.	1330 hrs. 20 Feb 45 on 10 CBRBn parade	Jas W Watt Lt for Adj 10 CBRBn

ALL DELETIONS AND ALTERATIONS WILL BE INITIALLED.

Ex A.

SUMMARY OF EVIDENCE

In the case of C-64119 Pte (A/Cpl) George William FARRANCE on the strength of 42 Coy, 10 CBR Bn., a soldier of the Canadian Army Overseas.

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

FIRST WITNESS
Prosecution

C-80238 Cpl WILSON, G (CH of O) of 42 Coy on strength of 10 CBR Bn., having been duly sworn states:

I am C-80238 Cpl Wilson, G (CH of O) of 42 Coy on strength of 10 CBR Bn. On the night of 4th Jan 1945 at approx 1630 hrs the accused, whom I now recognize, (C-64119 Pte (A/Cpl) Farrance, G W) and I started to drink cognac in room 11, 42 coy lines. I remember nothing else.

Q: You have no idea how long you were drinking?
A: No sir.

Q: Do you remember taking or riding in a truck?
A: I could not swear to that; but I have a vague idea of bouncing around sometime on the night of 4 Jan 1945 and that is all, sir.

R P 83(b) complied with.

G Wilson
(G WILSON) Cpl C-80238

Accused declines to cross examine the witness.

SECOND WITNESS
Prosecution

A-22435 Pte HAGARTY, F (CH of O) of 42 Coy on strength of 10 CBR Bn., having been duly sworn states:

I am A-22435 Pte Hagarty, F (CH of O) of 42 Coy on strength of 10 CBR Bn. During the night of 4/5 Jan 1945 I came out of a lavatory of 10 Bn Orderly Room block and a truck was stalled in the arch. I walked to the front of the truck and watched the accused, whom I now recognize, try to start it. When they decided to push it to get it to start, I gave them a hand. We pushed it about a blick but it didn't start. Finally the accused got it started. There were two Cpls in the truck and one of them, (I don't know which one) asked me if I'd like a ride. I got in the front of the truck and we drove around town and stopped for a few drinks.

Q: Were you ever in the back of the truck?
A: No sir.

Q: When you pushed the truck did you notice any blankets in it?
A: No sir.

Q: Did you return in the truck?
A: Yes sir.

Q: Who was driving at that time?
A: The accused, whom I now recognize.

Cross examination by the accused.

Q: Would you say when you met, whether we were drunk or sober?
A: Yes, you had been drinking.

Q: Could you see it was just a ride around town for drinks, or if there was any other purpose?
A: I could see no purpose other than going for drinks.

Q: Did you at anytime during the night see us stop anywhere where we could sell blankets, or did you see us take blankets from the back of the truck?
A: I did not.

2.....Q: You were with us from

SECOND WITNESS
Prosecution
(Cont'd)

Q: You were with us from the moment we left the main gate until we returned?
A: Yes.

R P 83(b) complied with.

J. Hagarty
(F HAGARTY) Pte A-22435

THIRD WITNESS
Prosecution

K-4116 Pte MORELLI, J (R Regt C) of 49 Coy on strength of 10 CBR Bn., having been duly sworn states:

I am K-4116 Pte Morelli, J (R Regt C) of 49 Coy on strength of 10 CBR Bn. On the morning of 5th Jan 45 I was on duty, at the main gate to Leopold Barracks, as Regt'l Police. At 0130 hrs 5 Jan 45 the accused, whom I now recognize, came to the gate driving the Aux Services truck and stopped. I never asked him for a work ticket, because I was never instructed to ask for work tickets from the Aux Services. The truck stalled and it took the accused a few minutes to get started, and during this time we cracked a few jokes; it was then I noticed some blankets in the back of the truck. There was a Cpl and a Pte belonging to the CH of O in the truck with the accused. The Cpl was in the front with the accused and the Pte was in the back. I asked the accused where he was going and he said he was going to a dance.

Q: Did you question the accused regarding the blankets?
A: I asked him where he was going with the blankets, and he said they'd been in the truck a week or more. I told him he should have a unit to take them out.

Q: Would you recognize the Cpl and Pte if you were to see them again?
A: Yes sir.

Q: Were you there when the accused returned?
A: Yes, sir, but I was off duty for four hrs at that time.

Q: What time was that?
A: About 0330 hrs sir.

Q: What happened then?
A: Pte Grose took their names and numbers and turned them over to the R.P.s of 10 Bn.

R P 83(b) complied with.

Cross examination by the accused.

Q: Would you say I had been drinking?
A: No I would not say you were drinking.

J Morelli
(J MORELLI) Pte K-4116

FOURTH WITNESS
Prosecution

C-122549 Pte GROSE, G F (CIC) of 48 Coy on strength of 10 CBR Bn., having been duly sworn states:

I am C-122549 Pte Grose, G F (CIC) of 48 Coy on strength of 10 CBR Bn. On the morning Jan 5, 1945 at 0030 hrs, on my return from the Bn kitchen, the Orderly Officer of the day had left orders to apprehend the Cdn Legion truck in charge of Cpl Farrance with two men and place them under close arrest, which I carried out at approx 0330 hrs of Jan 5. On the return there were two Cpls and one Pte. The Pte was riding in the front of the truck.

Q: Were there any blankets in the truck on its return?
A: No, there were none.

Q: Who was driving the truck?
A: The accused whom I now recognize.

3.....Cross examination by the

FOURTH WITNESS
Prosecution
(Cont'd)

Cross examination by the accused.

Q: You are willing to swear that those are the correct times?
A: Yes, they are all approx.

Q: Would you say I had been drinking?
A: You had been drinking.

R P 83(b) complied with.

(G F GROSE) Pte C-122549

FIFTH WITNESS
Prosecution

D-126481 Cpl Whitaker, J (RCASC) of 14 CWLS, attached to 10 CBR Bn., having been duly sworn states:

I am D-126481 Cpl Whitaker, J (RCASC) of 14 CWLS, attached to 10 CBR Bn. At approx 2230 hrs 4 Jan 45 I parked my truck and immobilized it in front of 10 Bn Orderly Room Block. At approx 0230 hrs 5 Jan the Ord Sjt and R P Sjt woke me up and asked me the number of the Aux Services truck, or any identification markings of the same. They went to identify a truck and came back 10 minutes later and told me that my truck Ford 60 cwt No CL-4269003 was missing. At 0830 hrs 5 Jan 45 I found my truck parked in the accustomed place. I found nothing missing or anything damaged, but the truck was not immobilized. I am in complete charge of the Aux Ser truck and I did not authorize the accused to drive same that night.

Q: When you parked your truck on the night of 4 Jan 45 were there any blankets in the back?
A: No sir.

Q: Was there anything left in the back of the truck?
A: No sir.

Q: You found nothing missing on the morning of the 5 Jan 45?
A: No sir; nothing missing.

R P 83(b) complied with.

Cpl Whitaker

(J WHITAKER) Cpl D-126481

The accused declines to cross examine the witness.

SIXTH WITNESS
Prosecution

B-46477 CQMS RICHARDSON, R H (A&S Highrs) of 42 Coy on strength of 10 CBR Bn., having been duly sworn states:

I am B-46477 CQMS Richardson, R H (A&S Highrs) of 42 Coy on strength of 10 CBR Bn. Between the hours of 2230 4 Jan 45 and 0630 hrs 5 Jan 45, approx 25 blankets were stolen from my store-room, by means of a ventilator. I have since taken precautions so this will not happen again.

Cross examined by the accused.

Q: How large is this ventilator?
A: Approx 10" by 12".

Q: Would you say it was 10" X 12" in a 12" wall?
A: Those are approx measurements.

Q: You heard no sound in that time?
A: I heard no sound.

Q: Do you sleep in the stores?
A: I sleep in the rear room of the stores.

R P 83(b) complied with.

R H Richardson

(R H RICHARDSON) CQMS B-46477

SEVENTH WITNESS
Prosecution

K-42916 Sjt MORRISON, G A (HQ Coy) on the strength of 10 CBR Bn., having been duly sworn states:

I am K-42916 Sjt Morrison, G A (HQ Coy) on the strength of 10 CBR Bn. I was B.O.S. from reveille 4 to reveille 5 Jan 45. At approx 0145 hrs the 5 Jan 45 Sjt Francis brought to my attention that the accused, whom I now recognise, was absent from barracks and was suspected of having the Legion truck. On checking of 42 Coy barrack rooms, with Sjt Francis, I found that the accused was absent; we also checked the vehicle park, the Legion, and with the Guard Room; and found the Legion truck was gone. At the Guard Room the R.P. on duty said the Legion truck went out with a Cpl answering the description of the accused.

Q: Are you familiar with the "Instructions for the Guard?
A; Yes sir - I submit herewith a copy of same.

Q: Are you familiar with the statement in these Instructions for the Guard which state: Every veh entering or leaving the bks will be stopped. If leaving the work ticket will be carefully scrutinized to ensure that it is a duly authorized journey that the work ticket is signed by proper authority?

A: Yes sir.

R P 83(b) complied with.

G A Morrison Sjt
(G A MORRISON) Sjt K-42916

Accused declines to cross examine the witness.

DOCUMENTARY EVIDENCE

Instructions for the Guard dated 23 Oct 44 accepted as documentary evidence, was read over to the accused, marked Exhibit "A" and signed by me.

(J F JUBY) Lt
CH of O - 10 CBR Bn
Officer detailed to take
Summary of Evidence.

EIGHT WITNESS
Prosecution

L-22849 Sjt FRANCIS, V R (RCE) of 42 Coy on the strength of10 CBR Bn., having been duly sworn states:

I am L-22849 Sjt Francis, V R (RCE) of 42 Coy on the strength of 10 CBR Bn. At approx the hour of 0130, 5th Jan 45 an infm received, I investigated and found the accused, Cpl Farrance, whom I now recognize, to be missing from barracks, when he was under close arrest, with his escort Cpl Wilson, who was also missing. I reported this matter to the B.O.S. (Sjt Morrison). Together we investigated further and found that the accused, his escort, and one other man, to be absent. We investigated the truck and found, that the Legion truck was missing. We informed the Ord Officer, and the Gate Guard. We were informed by the guard that the Legion vehicle with three men had passed through the gate.

Q: What was the infm received?
A: That three men with a vehicle and blankets had departed from the barracks.

Cross examination by the accused.

Q: Who gave you the infm that the truck, three men and blankets were missing?
A: I will not answer that question, because I still wish to find out where equip and personal effects are going, and if I reveal the source of my infm I will naturally lose this contact.

R P 83(b) complied with.

V R Francis
(V R FRANCIS) Sjt L-22849

The accused having been cautioned as follows; "Do you wish to make a statement or give any evidence on oath? You are not obliged to say anything or to give any evidence unless you wish to do so, but whatever you may say, or any evidence you may give will be taken down in writing and may be used in evidence", declines to give any evidence and reserves his defence.

I certify that the foregoing summary of evidence consisting of five (5) pages was taken down in writing by me, in the presence and hearing of the accused.

I certify that R P 4 (c) (d) (e) and (f) have been complied with.

J F July Lieut

(J F JUBY) Lt
CH of O - 10 CBR Bn
Officer detailed to take
Summary of evidence.

LIST OF WITNESSES

FOR THE PROSECUTION

C-80238	Cpl	Wilson, G	42 Coy, 10 CBR Bn
A-22435	Pte	Hagarty, F	42 Coy, 10 CBR Bn
K-4116	Pte	Morelli, J	49 Coy, 10 CBR Bn
C-122549	Pte	Grose, G F	48 Coy, 10 CBR Bn
D-126481	Cpl	Whitaker, J	14 CLWS, 10 CBR Bn
B-46477	CQMS	Richardson, R H	42 Coy, 10 CBR Bn
K-41916	Sjt	Morrison, G A	HQ Coy, 10 CBR Bn
L-22849	Sjt	Francis, V R	42 Coy, 10 CBR Bn

FOR THE DEFENCE

NIL

LIST OF EXHIBITS

Exhibit "A" - Instructions for the Guard.

I CERTIFY THAT I HAVE RECEIVED FREE OF CHARGE A COPY OF THE CHARGE SHEET, THE LIST OF WITNESSES, THE LIST OF EXHIBITS, AND THE SUMMARY OF EVIDENCE.

I DO DESIRE THE SERVICES OF AN OFFICER TO DEFEND ME IN MY TRIAL BY COURT MARTIAL.

G W Farrance

(G W FARRANCE) Pte (A/Cpl)
C-64119

Exhibit "A" J.B. Holyland

DM

INSTRUCTIONS FOR THE GUARD

23 Oct 44

1. NO rft personnel, and NO P.E. personnel (C.R.) will be allowed to go out of the gate before 1630 hrs daily, except Sunday, unless in the possession of a pass or chit signed by the C.O., 2 i/c or Adjt of 10 or 11 CBR Bn, or unless on a duty with parade under the Comd of an Offr or Senior NCO. On Sunday, personnel may be permitted to leave at 1200 hrs.

2. Every veh entering or leaving the bks will be stopped. If leaving, the work ticket will be carefully scrutinized to ensure that it is a duly authorized journey that the work ticket is signed by the proper auth, (in the case of 10 CBR Bn by the CO, 2 i/c, Adjt or QM, ONLY, in the case of 11 CBR Bn by the CO, 2 i/c, Adjt or QM), and that the time OUT on the work ticket corresponds approximately with the time the veh passes the gate. This will be an invariable procedure for all mil vehs except those used by Belgian tps and their sentry must be prepared to authorize the passage of all such vehs. Vehs driven by the O.C., 2 i/c, or Adjt of 10 or 11 CBR Bn may be allowed exit without examination of work ticket, but ONLY provided the sentry recognizes the Offr concerned. Sentries will examine the contents of all other than 10 or 11 CBR Bn to ensure that property of these units is NOT being taken out of camp. ANY question regarding the above matters will be referred to the Adjt of either 10 or 11 CBR Bn and the veh held in the parade square until it is decided.

3. Paybooks of all personnel entering the bks after 2200 hrs daily, will be checked and a list of restl particulars, unit, and coy of rft bn noted. The same applies to personnel entering without pass before 1630 hrs daily except Sunday. The above particulars will be handed in to Adjts of 10 and 11 CBR Bns daily at 0900 hrs.

4. Passes will be collected at the gate and handed in to respective Adjts at 0900 hrs daily. It is noted that NO pass is valid unless it has the stamp of the Bn Orderly Room on it.

5. Sentries will NOT allow personnel to loiter at the entrance. This applies to all civilians as well as to soldiers.

6. NO peddlers will be allowed inside the bks area.

7. Only civilians possessing duly authorized passes or certified by the Belgian sentry will be allowed to enter the bks.

8. Provost Sgts of each bn will be responsible for change of sentries at duly auth intervals.

9. If it is necessary to escort personnel to the gd room at any time, only ONE sentry will leave the gate to do so. He will NOT leave the gate for any other purpose.

10. The Guard has the auth to check and examine any parcel or bundle that personnel may be carrying out of the barracks.

Signed:

(C.M.G. Arthurs) Capt.,
Adjt., 10 C.B.R. Bn.

(F.W. Pardee) Capt.,
Adjt., 11 C.B.R. Bn.

DISTRIBUTION 'C'
11 C.B.R. Bn - 10 copies.

Date: 3 Feb 45

C64119 Pte (A/Cpl) FARRANCE GW
(NAME OF ACCUSED)

1. I hereby acknowledge receipt of one copy of CHARGE SHEET and one copy of the SUMMARY OF EVIDENCE delivered to me 9 Feb 45.
(Date)

2. (a) ~~I request that _____ if available, be appointed. OR~~

(b) I request that an officer be appointed as my Defending Officer at my trial by Court Martial.

(Delete either (a) or (b))

(SIGNED) G W Farrance
(G W Farrance)

I hereby certify that Capt EE TEARLE was appointed to defend C-64119 Pte A/Cpl FARRANCE G W at his forthcoming trial by Court Martial and that the said officer was notified that he was Defending Officer on 9 Feb 45.
(Date)

[illegible] Capt
(Adjutant)
10 Cdn. Base Rft. Sq.,

SUMMARY OF EVIDENCE

In the case of C-80238 Cpl Grenville WILSON (CH of O) on the strength of 42 Coy, 10 CBR Bn., a soldier of the Canadian Army Overseas.

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

FIRST WITNESS
Prosecution

L-22849 Sjt FRANCIS, V R (RCE) of 42 Coy on the strength of 10 CBR Bn., having been duly sworn states:

I am L-22849 Sjt Francis, V R (RCE) of 42 Coy on the strength of 10 CBR Bn. On the morning of Jan 5 at approx 0130 hrs, on infm received I investigated and found the accused, whom I now recognize, to be missing. I informed the B.O.S. (Sjt Morrison) and we investigated further in the barracks and when the accused could not be found we reported it to the Bn Orderly Officer. We investigated the vehicle which was reported missing and informed the provost at the gate.

Q: Was the accused on duty?
A: Yes, Sir, he was, as escort to Cpl Farrance, who was under close arrest.

Q: What was the infm received?
A: That three men with a vehicle and blankets had departed from the barracks.

R P 83(b) complied with.

V. R. Francis Sgt.
(V R FRANCIS) Sjt L-22849

Accused declines to cross examine the witness.

SECOND WITNESS
Prosecution

K-40916 Sjt MORRISON, G A (CIC) of HQ Coy on the strength of 10 CBR Bn., having been duly sworn states:

I am K-40916 Sjt Morrison, G A (CIC) of HQ Coy on the strength of 10 CBR Bn. I was B.O.S. from reveille the 4 to reveille the 5 Jan 45. Sjt Francis brought to my attention at approx 0145 hrs, 5 Jan 45, that the accused, whom I now recognize, was absent from barracks and believed to be with the Legion truck. On checking of the barrack rooms of 42 Coy, also checking with the vehicle park and Guard Room, we found that a Cpl answering the description of the accused was with the Legion truck, when it went out.

R P 83(b) complied with.

G A Morrison
(G A MORRISON) Sjt K-40916

Accused declines to cross examine the witness.

THIRD WITNESS
Prosecution

K-4116 Pte MORELLI, J (R Regt C) of 49 Coy, on the strength of 10 CBR Bn., having been duly sworn states:

I am K-4116 Pte Morelli, J (R Regt C) of 49 Coy, on the strength of 10 CBR Bn. At 0130 hrs 5 Jan 45 I was on duty at the main gate, as a member of the R.P., when the accused, whom I now recognize, came to the gate in the Legion truck, accompanied by a Cpl and a Pte.

Q: Did you examine the truck?
A: Not exactly, I didn't examine it, I just happened to look in the back of the truck and it was thin I saw some blankets, and the Pte riding in the back.
Q: Did the truck leave the barracks?
A: Yes sir.

2.....Cross examination by the

THIRD WITNESS
Prosecution
(Cont'd)

Cross examination by the accused.

Q: Did nothing strik you as strange about a truck going out at that time of night or early morning?
A: No; not the Legion truck, because the Legion truck travels at all hours.

Q: You just seen "some" blankets?
A: I never mentioned any number of blankets, I just saw a few.

Q: You could see the whole interior of the truck?
A: No.

Q: That was the sum total of your investigations, just peering into the rear of that truck?
A: Yes.

R P 83(b) complied with.

J Morelli
(J MORELLI) Pte K-4116

FOURTH WITNESS
Prosecution

C-122549 Pte GROSE, G F (CIC) of 48 Coy, on the strength of 10 CBR Bn., having been duly sworn states:

I am C-122549 Pte Grose, G F (CIC) of 48 Coy on the strength of 10 CBR Bn. At approx, from 0030 to 0130 hrs of Jan 5, 1945 on return from 10 Bn kitchen I was informed by the Orderly Officer of the day, to apprehend the Cdn Legion truck in charge of Cpl Farrance with two men and place them under close arrest, which I carried out at approx 0330 hrs of Jan 5, 1945. The men, I charged with improper possession of the vehicle. Cpl Wilson, whom I now recognize, was in the truck at the above mentioned time.

Q: Was Cpl Wilson one of the men you arrested?
A: Yes.

Q: Where was he riding?
A: In the front seat.

R P 83(b) complied with.

G F Grose
(G F GROSE) Pte C-122549

Accused declines to cross examine the witness.

FIFTH WITNESS
Prosecution

B-46477 CQMS RICHARDSON, R H (A&S Highrs) of 42 Coy, on the strength of 10 CBR Bn., having been duly sworn states:

I am B-46477 CQMS Richardson, R H (A&S Highrs) of 42 Coy, on the strength of 10 CBR Bn. Between the hours of 2230 hrs 4 Jan 45 and 0630 hrs 5 Jan 45 approx 25 blankets were stolen from my stores, by means of a ventilator near which the blankets were piled. Steps have been taken to eliminate a reoccurence of such a theft.

R P 83(b) complied with.

R H Richardson
(R H RICHARDSON) CQMS B-46477

Accused declines to cross examine the witness.

SIXTH WITNESS
Prosecution

D-126481 Cpl WHITAKER, J (RCASC) of 14 CLWS attached to 10 CBR Bn., having been duly sworn states:

I am D-126481 Cpl Whitaker, J (RCASC) of 14 CLWS att to 10 CBR Bn. At approx 2230 hrs 4 Jan 45 I parked my truck and immobilized same in front of 10 CBR Bn Orderly Room. At approx 0230 hrs 5 Jan 45 the Orderly Sjt and the R P Sjt woke me up and asked me the number of my Aux Service truck or any identification markings of same. They went out to identify a truck and came back 10 minutes later and told me my truck was missing. My truck is a Ford 60 cwt No CL-4269003. I am in complete charge of same and did not authorize anyone to drive same that night. There was no blankets in my truck when I parked it at 2230 hrs 4 Jan 45. Next morning at 0800 hrs 5 Jan 45 I found my vehicle, examined it, and found nothing missing and there were no blankets in the back.

R P 83(b) complied with.

(J WHITAKER) Cpl D-126481

Accused declines to cross examine the witness.

The accused having been cautioned as follows; "Do you wish to make a statement or give any evidence on oath? You are not oblidged to say anything or to give any evidence unless you wish to do so, but whatever you may say or any evidence you may give, will be taken down in writing and may be used in evidence", declines to give any evidence and reserves his defence.

I certify that the foregoing summary of evidence consisting of three (3) pages was taken down in writing by me, in the presence and hearing of the accused.

I certify that R P 4 (c) (d) (e) and (f) have been complied with.

(J F JURY) Lt
CH of O - 10 CBR Bn
Officer detailed to take
Summary of Evidence.

LIST OF WITNESSES

FOR THE PROSECUTION

L-22849	Sjt	Francis, V R	42 Coy, 10 CBR Bn
K-41916	"	Morrison, G A	HQ Coy, 10 CBR Bn
K-4116	Pte	Morrelli, J	49 Coy, 10 CBR Bn
C-122549	"	Grose, G F	48 Coy, 10 CBR Bn
B-4477	CQMS	Richardson, R H	42 Coy, 10 CBR Bn
D-126481	Cpl	Whitaker, J	14 CLWS, 10 CBR Bn

FOR THE DEFENCE

NIL

LIST OF EXHIBITS

NIL

I CERTIFY THAT I HAVE RECEIVED FREE OF CHARGE A COPY OF THE CHARGE SHEET, THE SUMMARY OF EVIDENCE, THE LIST OF WITNESSES AND THE LIST OF EXHIBITS.

I DO DESIRE THE SERVICES OF AN OFFICER TO DEFEND ME AT MY TRIAL BY COURT MARTIAL.

G. Wilson

(G WILSON) Cpl O-80238

Date: 3 Feb 45

C 80238 Cpl WILSON G
(RANK OF ACCUSED)

1. I hereby acknowledge receipt of one copy of CHARGE SHEET and one copy of the SUMMARY OF EVIDENCE delivered to me 9 Feb 45. (Date)

2. (a) I request that Capt Teagle, E.E. if available, be appointed. OR

(b) ~~I request that an officer be appointed as my Defending Officer at my trial by Court Martial.~~

(Delete either (a) or (b))

(SIGNED) G. Wilson
(G Wilson)

I hereby certify that Capt EE TEAGLE was appointed to defend C-80238 Cpl Wilson G. at his forthcoming trial by Court Martial and that the said Him was notified that he was Defending Officer on 9 Feb 45. (Date)

for (Adjutant)
10 Cdn. Base Rft. Dn.

SUMMARY OF EVIDENCE

In the case of A-22435 Pte Harold HAGGARTY (CH of O) of 42 Coy, on the strength of 10 CBR Bn., a soldier of the Canadian Army Overseas.

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

FIRST WITNESS
Prosecution

L-22849 Sjt FRANCIS, V R (RCE) of 42 coy on the strength of 10 CBR Bn., having been duly sworn states:

I am L-22849 Sjt Francis, V R (RCE) of 42 coy on the strength of 10 CBR Bn. At approx the hour of 0130 the 5 Jan 45, an infm I received, I investigated in the barracks and found Pte Haggarty, whom I now recognize, missing. I informed the B.O.S. (Sjt Morrison), and we investigated further around the barracks, and we investigated in regard to the truck and found the Legion vehicle, No CL-4269003 (Ford) 60 cwt missing. We informed the Orderly Officer and informed the Guard at the gate, who informed us that the Legion vehicle and three men had already passed through the gate.

Q: What was the infm received?
A: That three men with a vehicle and blankets had departed from the barracks.

R P 83(b) complied with.

V R Francis Sjt.
(V R FRANCIS) Sjt L-22849

Accused declines to cross examine the witness.

SECOND WITNESS
Prosecution

K-40916 Sjt MORRISON, G A of HQ Coy on the strength of 10 CBR Bn., having been duly sworn states:

I am K-40916 Sjt Morrison, G A of HQ Coy on the strength of 10 CBR Bn. I was B.O.S. from Reveille the 4 to Reveille the 5 Jan 45. At approx 0145 hrs 5 Jan 45, Sjt Francis brought to my attention that the accused, whom I now recognize, was absent from barracks. On checking 42 coy rooms with Sjt Francis, we found the accused was absent.

Cross examination of the witness by the accused.

Q: Did you find me absent from barracks or from my quarters?
A: I found you absent from your quarters.

R P 83(b) complied with.

G A Morrison
(G A MORRISON) Sjt K-40916

THIRD WITNESS
Prosecution

K-4116 Pte MORELLI, J (R Regt C) of 49 Coy, on the strength of 10 CBR Bn., having been duly sworn states:

I am K-4116 Pte Morelli, J (R Regt C) of 49 Coy, on the strength of 10 CBR Bn. At 0130 hrs 5 Jan 45 I was on duty at the main gate as R.P., when the Legion truck came to the gate with two Cpls in front. It was when I happened to look in the back of the truck, when I saw the accused, whom I now recognize, riding in the rear of the truck.

Cross examination of the witness by the accused.

Q: Would you state the exact part of the truck you looked in; whether it was over the back or through the holes in the tail gate?
A: I looked in the holes of the tail gate and from there I could see the rear half of the truck and I saw some blankets and you were lying on the blankets.

Q: Did you actually see my face?
A: Not until you got out of the truck.

2.....Q: Did you see

THIRD WITNESS
Prosecution
(Cont'd)

Q: Did you see me get out of the truck?
A: Yes.

Q: How long was the truck in the arch-way?
A: I'd say about ten minutes.

Q: Could it have been possible for someone in the back of the truck to have gotten back into barracks, while the truck was in the arch-way?
A: Yes.

R P 83(b) complied with.

J Morelli
(J MORELLI) Pte K-4116

FOURTH WITNESS
Prosecution

C-122549 Pte GROSE, G F (CIC) of 48 Coy, on the strength of 10 CBR Bn., having been duly sworn states:

I am C-122549 Pte Grose, G F (CIC) of 48 Coy, on the strength of 10 CBR Bn. Between the hours [redacted] and 0130 the morning of Jan 5, 1945, on return from 10 Bn kitchen, I was ordered by the Orderly Officer of the day to arrest occupants of the Cdn Legion truck, in charge of Cpl Farrance. At 0330 hrs of Jan 5, 1945 on return of this vehicle I placed the three occupants under close arrest as ordered. The three occupants, of which Pte Haggarty, whom I now recognize, was one man escorted by me to the Guard Room.

Q: On return of the Legion truck did you see any blankets in the rear?
A: On inspection none were found.

R P 83(b) complied with.

G.F. Grose
(G F GROSE) Pte C-122549

Accused declines to cross examine the witness.

FIFTH WITNESS
Prosecution

B-46477 CSMS RICHARDSON, R H (A&S Highrs) of 42 Coy, on the strength of 10 CBR Bn., having been duly sworn states:

I am B-46477 CSMS Richardson, R H (A&S Highrs) of 42 Coy, on the strength of 10 CBR Bn. Between the hours of 2230 hrs 4 Jan 45 and 0630 hrs 5 Jan 45 approx 25 blankets were stolen from my store room by means of a ventilator near which the blankets were piled. Steps have been taken to ensure no further loss by this ventilator shall occur.

R P 83(b) complied with.

R H Richardson
(R H RICHARDSON) CSMS B-46477

SIXTH WITNESS
Prosecution

C-118595 Pte McPHAIL, W J (R Regt C) of 48 Coy, on the strength of 10 CBR Bn., having been duly sworn states:

I am C-118595 Pte McPhail, W J (R Regt C) of 48 Coy, on the strength of 10 CBR Bn. I was guard at the front gate from midnight 4/5 Jan 45 as Regt'l Guard. At approx 0115 hrs 5 Jan 45 I heard a truck try to start and when it came to the gate I called the R.P. He O Kayed the truck and we opened the gate. While trying to get the truck started one Cpl got out of the cab; a pte got out of the back, leaving a red-headed Cpl in the cab. The accused, whom I now recognize, was the Pte. The accused came around to the front of the truck, to help to start it. The accused went out with the truck and did not return during my tour of duty.

Cross examination by the accused.

Q: Did you recognize when I was helping with the truck or getting out of the back?
A: I recognized you the second time as the man who got out of the back.
R P 83(b) complied with.

(W J McPHAIL) Pte C-118595

SEVENTH WITNESS
Prosecution

D-126481 Cpl WHITAKER, J.(RCASC) of 14 CLWS attached to 10 CBR Bn., having been duly sworn states:

I am D-126481 Cpl Whitaker, J (RCASC) of 14 CLWS att to 10 CBR Bn. At approx 2230 hrs 4 Jan 45 I parked my truck and immobilized it in front of 10 CBR Bn Orderly Room. At approx 0230 hrs 5 Jan 45 the Orderly Sjt and R.P. Sjt woke me up and asked me the number of my Aux Service trucker any identification in markings of same. They went to identify the truck and came back 10 minutes later and told me my truck was missing. My truck is a Ford 60 cwt No CL- 4269003. I am in complete charge of same and did not authorize anyone to drive same that night. There were no blankets in my truck when I parked it at 2230 hrs 4 Jan 45. Next morning I found my veh at 0800 hrs 5 Jan 45. I examined it and found nothing missing and there were no blankets in the back.

R P 83(b) complied with.

J. Whitaker, Cpl.
(J WHITAKER) Cpl D-126481

The accused declines to cross examine the witness.

The accused having been cautioned as follows; "Do you wish to make a statement or give any evidence on oath? You are not oblidged to say anything or to give any evidence unless you wish to do so, but whatever you may say or any evidence you may give, will be taken down in writing and may be used in evidence", declines to give any evidence and reserves his defence.

I certify that the foregoing summary of evidence consisting of three (3) pages was taken down in writing by me, in the presence and hearing of the accused.

I certify that R P 4(c) (d) (e) and (f) have been complied with.

J. F. Juby Lieut
(J F JUBY) Lt
CH of O - 10 CBR Bn
Officer detailed to take
Summary of Evidence.

LIST OF WITNESSES

FOR THE PROSECUTION

L-22849	Sjt	Francis, V R	42 Coy, 10 CBR Bn.
K-41916	"	Morrison, G A	HQ Coy, 10 CBR Bn.
K-4116	Pte	Morelli, J	49 Coy, 10 CBR Bn.
C-122549	"	Grose, G F	48 Coy, 10 CBR Bn.
B46477	CQMS	Richardson, R H	42 Coy, 10 CBR Bn.
C-118595	Pte	McPhail, W J	48 Coy, 10 CBR Bn.
D-126481	Cpl	Whitaker, J	14 CLWS, 10 CBR Bn.

FOR THE DEFENCE

NIL

LIST OF EXHIBITS

NIL

I CERTIFY THAT I HAVE RECEIVED FREE OF CHARGE A COPY OF THE CHARGE SHEET, SUMMARY OF EVIDENCE, LIST OF WITNESSES AND A LIST OF EXHIBITS.

I DO DESIRE THE SERVICES OF AN OFFICER TO DEFEND ME AT MY TRIAL BY COURT MARTIAL.

H. Hagarty

(H HAGARTY) Pte A-22435

Date: 3 Feb 45

A 22435 Pte HAGARTY H
(NAME OF ACCUSED)

1. I hereby acknowledge receipt of one copy of CHARGE SHEET and one copy of the SUMMARY OF EVIDENCE delivered to me 9-2-45. (Date)

2. (a) ~~I request that~~
~~if available, be appointed. OR~~

(b) I request that an officer be appointed as my Defending Officer at my trial by Court Martial.

(Delete either (a) or (b))

(SIGNED) H Hagarty
(H HAGARTY)
H.H.

I hereby certify that Lt. E.E. TEAGLE was appointed to defend A 22435 Pte Hagarty H at his forthcoming trial by Court Martial and that the said officer was notified that he was Defending Officer on 9 Feb 45 (Date)

a/ (Adjutant)
10 Cdn. Base Rft. Dep.

529/Petitions/1 (DJAG)

15 Mar 45

DAAG (Dis)

Petitioner
C.84119 Pte (A/Cpl) Farrance GW
C.80238 Cpl Wilson G
A.22435 Pte Haggerty H
10 CBR Bn

1. Herewith the s/n proceedings together with the petition of the accused.

2. The accused were jointly charged and tried upon five charges. They were found guilty of all charges except the third. They were sentenced to 18 months detention and in addition Wilson was sentenced to be reduced to the ranks. The findings and sentences have been promulgated.

3. The accused jointly petitioned against this conviction on the fourth charge (improper possession of 25 blankets) on the ground that a prima facie case on this charge had not been established by the prosecution.

4. The evidence for the prosecution established the following pts:

(a) The Aux Ser veh was left immobilized and empty in the Leopold Bks at 2230 hrs 4 Jan 45.

(b) At 0130 hrs 5 Jan 45 the three accused were in the truck when it was driven to the gate of the bks. Haggerty was lying on some blankets in the back of the truck.

(c) The accused returned with the truck to the bks at 0330 hrs 5 Jan 45. The truck was empty.

(d) Between 2230 hrs 4 Jan 45 and 0630 hrs 5 Jan 45, approx 25 blankets disappeared from the coy stores.

(e) All three accused had at one time worked in the coy stores.

5. In my opinion the prosecution did establish a prima facie case against the accused and further there is sufficient evidence to sup the finding in the fourth charge.

6. If the GO IC decides to refuse the petition he should endorse at the foot of the petition the words "the prayer of the petition is denied" date the minute and sign it as GO IC this See over the words "A Superior Military Authority."

7. May the proceedings and petition be returned after they have been dealt with by the GO IC.

(T G Morris) Col
DJAG

To Lt-Col J Runcie M.C.
C.o. 10 C.B.R Bn.

Trial by F.G.C.M
Petition under Sec 574 K.R.(Can)

Sir:

1. We the undersigned hereby make application for the review by senior authority and the setting aside of the conviction against us on the 4th charge on our charge sheet dated 2 Feb 45.

2. In this connection it is our honest and sincere submission that a prima facie case had not been established by the procecution and that both findings and sentence on this charge should be set aside.

Respectfully submitted, Sir:
Geo Wm Farrance. C-64119 Pte (A/Cpl)
G Wilson C-80238 Cpl
H Haggerty, A-22335 Pte.

The prayer of the petition is denied.

"B L M Burns Maj-Gen
GO i/c

21 Mar 1945. Cdn Sec 1 Ech HQ 21 A Gp

SCHEDULE.

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

Accused: C-64119 Pte(A/Cpl) George William FARRANCE, Nth Shore R, 10 CBR Bn

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

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

At present under sentence for N/A beginning on (date) N/A (1)
(1. Insert sentence being served, or delete, if not applicable. See RP A6(4). Information should be found on MF B355 or AF B296.)

Time in confinement awaiting present trial—a total of 10 days, of which NIL days were spent in hospital.(1)
(1. See RP 46(A) fn 2. Information should be found on MF B355 or AF B296 admitted in evidence under E2.)

Sentence Awarded by the Court:

TO UNDERGO DETENTION FOR EIGHTEEN (18) MONTHS

(Sgd) N/A Judge-Advocate, if any. 15 Feb 45 Date awarded. (Sgd) "Donald MacKenzie" Major President. (RP 45, 50.)

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

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

Date (Sgd) Commanding

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

(For duties and powers see AA 54, 57, RP 37(D) fn 6,46(A), 51-56, 120, MML pp 759-761, KR Con 567-577. Acquittals require no confirmation and cannot be revised: AA 54(3). Sending back finding or sentence for revision by Court: AA 54(2), RP 120(G). If not confirmed, accused may be tried again: AA 137, MML p 64. Minute of confirmation or non-confirmation may be altered before promulgation: RP 53, MML p 65. Quashing after promulgation: KR Con 572. Duties and powers of reviewing offrs: AA 57, 57A, RP 53A, 54. The Confirming Offr must sign here personally. AA 172 fn 1.)

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

CONFIRMED & TO BE PROMULGATED ON A BN PARADE

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

(Sgd) "G S N Gostling" (G S N Gostling) Brigadier

Date 17 Feb 45 Commanding 2 CDN BASE RPT GP Confirming Officer.

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

Accused.	Date.	Signature of Offr.
C-64119 Pte (A/Cpl) George William FARRANCE Nth Shore R 10 CBR Bn	1330 hrs 20 Feb 45 on 10 CBR Bn parade	"Jas W Varty" Lt Ass Adjt 10 CBR Bn

ALL DELETIONS AND ALTERATIONS WILL BE INITIALLED.

56-69

CMA96 (In lieu of AFA81) 40/P & S/1698 (6144) 4/38B

FIELD GENERAL COURT-MARTIAL

Convened by Order of Brig G S N Gostling, R D Comd 2 CBRG dated 13 Feb 45

ACCUSED.

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

Number.	(a) Prmnt R.	(b) Appmt, A/R or A/Appmt.	Full Christian Names.	Surname.	Unit.
C-64119	Pte	(A/Cpl)	George William	FARRANCE	Nth Shore R 10 CBR
C-80238	Cpl		Granville Harold	WILSON CH of C	10 CBR Bn
A-22135	Pte			HAGGERTY, CH of C	10 CBR Bn

certified true copy

PROCEEDINGS OF TRIAL.

Held in the Fd in (country) BELGIUM on (date(s)) 15 Feb

D J A.

RECORD FORM A—OPENING PROCEEDINGS AND ARRAIGNMENT.

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

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

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

A3. The Court is opened. The accused (are) brought before the Court. At 1100 hours trial commences.

A4. The Prosecutor produces a Medical Certificate that accused (c,re) fit to undergo trial by court-martial.(1) ~~The Prosecutor informs the Court that accused elected to be tried by court-martial instead of being dealt with summarily by the CO.(2)~~
(1. KR Con 557. 2. AA 46(8), RP 60 fn 1. For effect see KR Con 563(c). Delete, if not applicable.

A5. President to accused: Do you object to N/A as interpreter? Ans N/A

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

The shorthand writer is sworn.(1)
(1. RP 72. Delete, if none employed.)

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

Ans No (2)
(1. RP 110. 2. If no objection, waiting member retires. RP 60(8). If objection, see procedure AA 51, RP 25, 71, 18, MML p 742.)

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

President	Major	D MacKENZIE, Essex Scot, X-9 List att 3 Cdn MEDD
Member	Captain	F A BAILLARGERON, Gen List, att Cdn Sec 1 Ech HQ 21 A Gp
Member	Captain	E B VAN DINE, RCASC, att Cdn Sec 1 Ech HQ 21 A Gp
Judge-Advocate	N/A	
Prosecutor	Major	R F WILSON, Line & Walls, att Cdn Sec 1 Ech HQ 21 A Gp
Defending Offr	(Capt	E E TEAGLE, Galg High 10 CBR Bn
	(Capt	W G D HUNGERFORD, RCASC att Cdn Sec 1 Ech HQ 21 A Gp

Questions by President: Is the Prosecutor a lawyer? Ans Yes Is the Defending Offr a lawyer? Ans No (2)
(1. RP 26, 27, 109, 111. List of offrs under instr will be returned separately with proceedings for information of Conv Offr.)
(2. If Pros a lawyer and Def Offr not, accused is entitled to an adjournment when RP 89 (B) and fn 2 were not followed. See DI p 3.)

A8. The accused C-64119 Pte (A/Cpl) FARRANCE, G.W. C-80238 Cpl WILSON, G. A-22135 Pte HAGGERTY, H. before arraignment make(s) (no) plea.(1)
(1. If a special plea is made for separate trial on one or more charges (RP 62(E), 108), or as to the jurisdiction of the Court (RP 34, 35(A), 113), or in bar of trial (RP 36), or as to accused's mental fitness to stand trial (AA 130, RP 57), or by one of several accused charged jointly to be tried separately (RP 16, 71), such plea, the addresses made in support or against, the evidence, if any, and finding are recorded per Notes. For forms of record see references in fns to RoP cited. Insert in A8 rank and name of the accused making the plea.)

A9. The accused is (are) arraigned (separately) on all charges in the charge sheet.(1) The accused does (do) not object to any charge.(2) There is no amendment to be made to the Charge Sheet.(3) The President records the pleas in Part I of the Schedule.
(1. RP 31, 112. See para 1 of Instrs p 2. When more than one Charge Sheet see RP 62; when several accused to be tried separately see RP 71(C), and use separate copies of CF A96 to record proceedings. 2. RP 32, RP 33. If otherwise, delete and make appropriate record per Notes.)

A10. ~~The Court is closed and considers the Instrs on Proceedings after Arraignment at top of p 2. The proceedings are continued on Record Sheet~~ C

PRESIDENT OR JA WILL INITIAL ALL DELETIONS AND ALTERATIONS.

INSTRUCTIONS ON PROCEDURE AFTER ARRAIGNMENT.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

PRESIDENT OR JA WILL INITIAL ALL DELETIONS AND ALTERATIONS.

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

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

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

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

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

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

President to accused: Do you wish to give evidence yourself as a witness, make a statement, or do neither? Ans. YES. NIGHTARRANGE FACTS & CHARACTER re Wilson & Mr Happerly CHARACTER re Sweeney. Do you intend to call witnesses on your behalf? Ans. NO. Are they witnesses as to character only? Ans. N/A.
(*1. RP 115. 2. RP 40(A), see 80(D). 3. RP 40 fn 10. 4. RP 40 fns 2, 9.*)

D6. Consequent on the answers recorded in para D5 the appropriate procedure for the defence is followed.(1)
(*1. RP 114, 115, 116. For procedure see Notes on back of Convening Order, CF 495. Evidence for accused as to his character should, if in his interest, be given before the finding. See RP 46(A) fn 1, 86(C). Note the further opportunity in para E1 of Record Form E. Record per Notes addresses, statement, evidence and any summing up by the JA under RP 42, 103(e).*)

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

D8. The President announces the finding(s), if any, of Not Guilty, and states to the accused that the finding(s) of the Court on the 1, 2 AND 4TH charge(s), being subject to confirmation, will be promulgated later.(1)
~~Or, The President announces that the accused is found Not Guilty on all charges and is to be released forthwith and that the proceedings are accordingly terminated. Part I of the Schedule is dated and signed.~~(2).
(*1. AA 54(3) (6), RP 45, 120(A). 2. AA 54(3), RP 45, 117. This alternative announcement is not applicable when there are pleas of Guilty outstanding and dealt with under Record Form B or C.*)

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

RECORD FORM E—PROCEEDINGS ON CONVICTION BEFORE SENTENCE.

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

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

E3. President to accused: Do you wish to address the Court on the Statement(s) and Conduct Sheet(s), and in mitigation of punishment?(1) Ans. NO.(2)
(*1. RP 37(C), 46(D). 2. Address, if any, recorded per Notes. Court should permit accused or his witnesses to prove on oath anything here or previously stated which would affect the amount of punishment. RP 37(F) fn 7.*)

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

E5. The Court considers the sentence.(1) The President records the sentence in Part I of the Schedule, which is dated and signed by him and the JA, if any.(2)
(*1. When several accused tried separately see RP 71 (D). One sentence only, comprised of the punishment or punishments laid down in AA 41, 44 and its proviso, is to be awarded to cover all charges in all charge sheets on which accused found guilty. RP 48. As to sentences see AA 44, 138, 182, RP 46-50, 69, 118, 119(A), KR Can 308, 330, 562-566, Overseas RO 209, 2323, MML p 60, 757-759. As to sentences assigned for civil offences by the law of England see AA 41(2), MML p 130. When accused already under sentence of imprisonment or detention see AA 44(1B), 68(1), KR Can 564. 2. RP 50. As to release from arrest by Confirming Offr see KR Can 567. As to assembly and dispersal of record after trial see instrs on back of Convening Order.*)

PRESIDENT OR JA WILL INITIAL ALL DELETIONS AND ALTERATIONS.

CHARGE SHEET

The accused C-6/119 Pte (A/Cpl) George Willian FARRANCE (N Shore R) C-80238 Cpl Granville WILSON (CH of O), and A-22435 Pte Harold HAGGERTY (CH of O), all on the strength of 42 coy 10 CBR Bn, soldiers of the Canadian Army Overseas.

are charged with

FIRST CHARGE
AA Sec 40

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

in that they

In the Field between 0130 hrs and 0330 hrs 5 Jan 45 were improperly in possession of a WD vehicle No CL 4269003 (Ford) 60 cwt, public property.

SECOND CHARGE
AA Sec 40

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

in that they

In the Field between 0130 hrs and 0330 hrs 5 Jan 45 whilst improperly in possession of a WD vehicle No CL-4269003 (Ford) 60 cwt, did improperly use government petrol.

THIRD CHARGE
AA Sec 18(4)

WHEN ON ACTIVE SERVICE STEALING PUBLIC PROPERTY

in that they

In the Field between 2330 hrs 4 Jan 45 and 0130 hrs 5 Jan 45 stole 25 blankets from 42 coy stores, public property.

FOURTH CHARGE
ALTERNATIVE
AA Sec 40

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

in that they

In the Field at 0130 hrs 5 Jan 45 were improperly in possession of 25 blankets, public property.

FIFTH CHARGE

WHEN ON ACTIVE SERVICE ABSENTING THEMSELVES WITHOUT LEAVE

in that they

In the Field at 0130 hrs 5 Jan 45 absented themselves without leave until apprehended at 0330 hrs 5 Jan 45.

Total absence: 2 hrs.

"J Runcie"
(J Runcie) Lt-Col
CO - 10 CBR Bn

In the Field
2 Feb 45

APPROVED ON BEHALF OF THE JUDGE ADVOCATE GENERAL
Pursuant to KR(Can) 540.

"H H Griffin"
(H H Griffin) Capt
AAJA
H" 2 Cdn Base Rft Gp

In the Field
13 Feb 45

TO BE TRIED BY FIELD GENERAL COURT MARTIAL

"G S N Gostling"
(G S N Gostling) Brigadier
Coad
2 Cdn Base Rft Gp

In the Field
13 Feb 45

FIELD GENERAL COURT-MARTIAL

(Whether the accused to be tried is under his comd or not, a FGCM may on application to him be convened by any offr of Cdn Army Overseas, or of any other force if authorized in law, in immediate comd of troops on active service, subject to RP 105(C) and restrictions imposed by appropriate authy. AA 49, 50, RP 104-107, 114. As to the duties and privileges of the Convening Offr in dealing with the application see MML Chap V paras 20 and 23. RP 87(8).

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

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

ACCUSED.

Number.	(a) Prmnt R.	(b) Appmt, A/R or A/Appmt.	Full Christian Names.	Surname.	Unit.
C-64119	Pte	(A/Cpl)	George William	FARRANCE,	Nth Shore R,10 CBRB
C-80238	Cpl		Granville	WILSON,	CH of O, 10 CBR Bn
A-22435	Pte		Harold	HAGGERTY,	CH of O, 10 CBR Bn

CONVENING ORDER.

1. Whereas complaint has been made to me, the undersigned, that the person(s) named above as the accused, being subject to military law, has (have) committed the offence(s) set forth in the Charge Sheet(s) attached and on (*date*) 13 Feb 45 endorsed by me, (~~or by an offr of my staff for me~~), " To be tried by Field General Court-Martial ".

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

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

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

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

(AA 49, RP 106(8), 107(A). Delete the whole or part, if not applicable.)

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

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

PRESIDENT.

(Rank.)		(Must be named. RP 106.)	(Unit.)
Major	D MacKENZIE,	Essex Scot, X-9 List att 3 Cdn INTD	

MEMBERS.

(Rank.)		(Named or detailed. RP 106.)	(Unit.)
Captain	F A BAILLARGEON,	Gen List att Cdn Sec 1 Ech HQ 21 A Gp	
Captain	E B VAN DINE,	RCASC, att Cdn Sec 1 Ech, HQ 21 A Gp	

~~WAITING MEMBER.~~

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

~~JUDGE ADVOCATE.~~

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

On Active Service in the Fd

in BELGIUM (*Country.*)	"G S N Gostling" (*Signed personally. RP 105 fn 2.*)	Brigadier (*Rank.*)	
Dat 13 Feb 45	(G S N Gostling) Commanding	2 CDN BASE RPT GP Convening Officer.	

CONVENING OFFR WILL INITIAL ALL DELETIONS AND ALTERATIONS

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

Adm.

MEDICAL OFFICER'S CERTIFICATE (KR(Can) Para 567)

I certify that I have this day examined A-22435 Pte HAGARTY, H.

10 CBR Bn and in my opinion he is fit ~~xxxxxx~~ to undergo trial by Court Martial.

Station FIELD

Date 15 Feb 45

"N A MacNeill" Capt
Medical Officer

10 CBR Bn
Unit

MEDICAL OFFICER'S CERTIFICATE (KR(Can) Para 567)

I certify that I have this day examined C-64119 Cpl FARRANCE, G.W.

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

Station FIELD

Date 15 Feb 45

"N A MacNeill" Capt
Medical Officer
10 CBR Bn

JOINT TRIAL

C-64119 Pte(A/Cpl)	FARRANCE, G.W.	- H Shore R
C-80238 Cpl	WILSON, G	- CH of C
A-22435 Pte	HAGGERTY, H	- CH of C

D-2 Pte McPhail W.J. shown on the Summary of Evidence, is not available as a witness.

The Defence has no objection to this being a joint trial and does not feel that his case is prejudiced thereby.

D-3

1st WITNESS FOR THE PROSECUTION D-126481 Cpl WHITAKER J., 14 CIWS, 10 Bn, 2 CBRG having been duly sworn

I am driver of Aux Services Truck at 10 Bn. I recall night of 4 Jan 45 I recognize Cpls Wilson & Farrance. I parked my truck alongside 2 others on the parade square about 1030 p.m. right in front of the Legion Office at LEOPOLD BKS. I immobilized it by throwing a secret switch on the starter. The No of the Truck is 4269903. It is a 60 cwt Ford. It is covered with a tarp. Has a frame on it. Has a built-in cupboard inside. It has 2 stickers on the windshiled and two 8 inch transfers on the doors and 1 on the tail gate indicating that it is a Legion War Services truck. I went to bed at 0230 hrs 5 Jan 45. Sgts Morrison and Francis woke me up. By reason of what they told me I told them that there were Aux Services stickers on the doors and tailgate. I told them the type of truck and the madke. I told them where I left it parked. I next saw the truck at 0800 hrs in the same spot I had parked it. The truck was not immobilized when I found it. The secret switch to the starter was open. This secret switch is festened under the bridge sign on the right front side of the vehicle. That is all I noticed about the truck. I don't think I could say whether the truck had been moved that night or not. I was in the same spot and I know that I had immobilized it. I am in complete charge of the truck. I did not authorize anyone to use the truck that night. The rear of the truck was empty when I left it. The floor of the box was clean. I did not check the mileage on the truck the night before.

No cross-examination:

RP 83 (b) complied with.

2nd WITNESS FOR THE PROSECUTION K-4116 Pte MORELLI, J. - 49 Coy 10 Bn - 2 CBRG having been duly sworn stated:

I recognize all the accused persons. Approx 0130 hrs 5 Jan 45 I was Regtl Police on duty at main gate of LEOPOLD BARRACKS. The accused drove up to the gate with the Aux Services Truck. I recognized the truck by the markings. Cpl FARRANCE was driving the truck. When he come to the gate the truck stopped. Cpl WILSON and FARRANCE got out. I walked around to the back of the truck and saw Pte HAGGERTY lying down on some blankets in the truck. I could see in the truck because an overhead light in the driveway shone about ½ way in the back of the truck. I could not identify Pte HAGGERTY when he was in the truck but I could identify him when he got out of the truck. The truck was stopped there about 10 minutes. Cpl FARRANCE finally got it started I did talk with them. We cracked a few jokes. I knew the Cpl and Pte belonged to CH of C but I did not know what unit Cpl FARRANCE belonged to. I asked Cpl FARRANCE where he was going and he said he was going to a dance. I asked him where he was going with the blankets and he said they had been there for a week or more. I told Cpl FARRANCE he should have a chit to take blankets from the gate. I can't tell how many blankets were in the truck. They were spread out flat. They were folded neatly. Right between the two bunkers on each side they were piled.

Cross-examination

I saw HAGGARTY get out of the back of the truck.. I was standing at the rear of the truck. They were 'fiddling' around with the truck for a while and then they pushed it through the gate. The archway is about 20 yards long at LEOPOLD BARRACKS gateway. The truck was at the gate. The radiator was about level with the gate. The gate was open.

By the Court

I estimate this Court Room to be 42 feet long. The blankets were grey regular Army issue blankets.

RP 83(b) complied with.

3rd WITNESS FOR THE PROSECUTION

K-40916 Sgt MORRISON, G.A., 10 Bn, 2 CBRG, having been duly sworn states:

I recognize all the accused persons. I was Bn Ord Sgt from Rev 4 Jan to Rev 5 Jan 45. At approx 0145 hrs 5 Jan 45 I was awakened by Sgt FRANCIS. I got up and as a result of what he said I accompanied him through the Coy lines looking for Cpl WILSON and Cpl FARRANCE. I could not find them. We checked the area thoroughly. We could not find them. We checked where the Aux Services park their veh and also the veh park. We were not able to locate the Aux Serv truck.

No cross-examination

RP 83(b) complied with.

4th WITNESS FOR THE PROSECUTION

N-22849 Sgt FRANCIS V.R., 10 Bn 2 CBRG having been duly sworn states:-

I recognize all three accused persons. On night of 4/5 Jan 45 I assisted in the search for all three. They could not be located. I also accompanied Sgt MORRISON in the area looking for a veh. Cpl WILSON is in our Coy. I know him before this occasion. Cpl WILSON was an escort for Cpl FARRANCE on the evening of 4 Jan 45. Cpl FARRANCE was under close arrest. I searched the area where they should have been and they could not be located.

No cross-examination.

By the Court:

On information received from a pte I also searched for Pte HAGGERTY. I was not at the gate when the truck returned. As a result of our search in the veh park and area we could not find the Aux Ser truck. We made the search approx 0130 hrs 5 Jan 45.

RP 83(b) complied with.

5th WITNESS FOR THE PROSECUTION

C-122549 Pte GROVE, G.F. (CIC) 10 Bn 2 CBRG having been duly sworn states:

I know the three accused persons. On 5 Jan 45 at approx 0130 hrs I was on duty at R.P. on the Gate at LEOPOLD BARRACKS. I was given orders by the Orderly Officer to apprehend the Aux Services Truck which was out of bs racks in charge of Cpl FARRANCE. I did that at 0330 hrs 5 Jan 45 on the veh returning to barracks with Cpl FARRANCE arriving with Cpl WILSON and Pte HAGGERTY. I placed the three men under close arrest. All three men were riding in the front of the truck. O return of the truck, the question of articles in the back of the truck was brought up. I investigated and there was nothing in the back of the truck. At the time I knew Cpl FARRANCE only by name. I did not know the other 2. The three accused are the three men that I apprehended. I did note Cpl FARRANCE's condition. He had been drinking. I walked ahead of him into the R.P. Office. I saw him get out of the truck. He was not awkward in getting out of the truck

.../3

He was not unsteady on his feet when I saw him . I talked to him. I could understand what he told me. He had no trouble in answering any questions I asked him. I asked him if he'd been out in the truck. He said Yes. I did not ask him any questions about blankets.

No cross-examination.

By the Court: Cpl WILSON & Pte HAGGERTY both went into the Guard Room with us. They offered no argument. I do not know if they had been drinking.

RP 83(b) complied with.

6th WITNESS FOR THE PROSECUTION B-46477 CQMS Richardson R.H., 10 Bn 2 CBRG having been duly sworn states:-

I am CQMS of 42 Coy 10 Bn. I recognize all three accused. Two are in my Coy. They have all been in my stores at one time or another. Cpl FARRANCE was inside Stores for some clothing while in detention on a previous case. Cpl WILSON was in my old storeroom. I can't say if he has been in the present storeroom. The blankets were piled 2 ft from the foor on the left hand side going into my storeroom. I piled blankets there from the start. Cpl FARRANCE & Pte HAGGERTY have been in the storeroom since I piled them there. I couldn't say whether Cpl WILSON has been in. I moved into my present storeroom between Xmas and New Years. Between 2230 hrs 4 Jan and 0630 hrs 5 Jan I had approx 25 blankets stolen from my storeroom. The majority were grey blankets. There might have been a few brown or dark blankets. They were regular issue blankets. This storeroom is normally kept locked by a door lock and either I or my storeman have a key. My storeman was in Hosp and I slept in my storeroom on night of 4 - 5 Jan. There is a room partitioned off and he sleeps there. I locked the door from the inside and turned the key part way. From the hallway leading into the storeroom is a ventialtor about 9" X 12" and 12" in length(the width of the wall). It is covered by a metal cover on the outside that just fits in a slot; the blankets were piled in front of the ventilator opening in the storeroom. The pile of blankets from the floor was approx 3½'. The ventilator is approx 2' from the floor. To take blankets, all that had to be done was to remove the metal from the ventilator and to pull a blanket at a time from the pile through the ventilator. When I saw the pile of blankets the next a.m. the pile was a few inches below the ventilator shaft. I heard no noise or commotion whatsoever during the night. I have no knowledge of who took theblankets.

Cross-examination:

I have no reason to suspect these three accused persons. I'm just stating facts re the disappearance. This ventilator is apparent from the inside of the room. The blankets were piled there when the metal cover was on. Anyone inside the storeroom could see the ventilator if the pile of blankets was below the level of the ventilator.

By the Court:

The height of the pile of blankets varied from day to day. On evening of 4th Jan there were 35 or 40 blankets in the pile. Next a.m there was approx 15. The figure of 25 missing is approx. I went to bed 2230 hrs 4 Jan. I noticed the blankets. I had served incoming hosp cases. I remember the size of the pile. I had not lost blankets before from by storeroom, but 30 or 40 a day had been going out of barracks. We keep no record of blankets on hand from day to day. The next a.m. the pile was still neat.

RP 83(b) complied with.

...../4

7th WITNESS FOR THE PROSECUTION C-80238 Cpl WILSON, G., CH of O, 10 Bn 2 CBRG having been duly sworn is examined by the prosecution.

(This Witness is warned that he has the privilege of not (answering any question which might in his opinion (incriminate his own personal defence (MML 95)

I am a member of 42 Coy 10 Bn. I am on strength there. I was on strength on night 4 - 5 Jan 45. I know the other 2 accused persons. On afternoon of 4 Jan Cpl FARRANCE and myself started drinking cognac in barracks. One bottle followed another until such time as I myself went into a mental blank. We started between 1630 and 1700 hrs. I can say that between 2 of us we drank 3 bottles. There was a drink given out of each bottle to a man in the area. I have a vague idea but no recollection of bouncing around something that evening. I don't know what time I got back that night. Cpl FARRANCE and I got in an argument over our Army Servide We fought a battle right up the coast of France. That is one highlight that stands out in the evening. But nothing material to this incident stands out. I don't know how long I drank indoors before leaving LEOPOLD BARRACKS.

No Cross-examination.

By the Court: The first thing I remembered was at breakfast hour when they knocked on the door of the Guard Room at about 0700 hrs. Pte HAGGERTY was not with us during the drinking period.

RP 83(b) complied with.

8th WITNESS FOR THE PROSECUTION A-22435 Pte HAGGERTY H, CH of O, 10 Bn 2 CBRG, having been duly sworn states:-

(This Witness is warned that he has the privilege of (not answering any questions which might incriminate his (own defence.)

I am on strenght of 42 Coy 10 CBR Bn 2 CBRG
I recall night of 4 - 5 Jan 45. I noticed 2 Cpls in the room drinking. They are the two accused Cpls. It was in 42 Coy lines in LEOPOLD BKS. This was afternoon. I took no part in that. I came into the picture between 2400 hrs and 0130 hrs 4/5 Jan 45. I was in the lavatory in the main bldg and as I walked into the archway from the lavatory a 60 cwt truck was stalled in the archway. I walked around to the front of the truck and asked the fellows there if I could give them a hand. They decided to push the truck and I helped them push the truck approx a block. It still wasn't started. The driver tried to start it again from the cab instead of pushing it. He succeeded. One of the Cpls asked me if I would like to go for a ride. I said"sure". I got into the front. We drove around to 4 or 5 different cafes and had a few drinks in each. On returning to LEOPOLD I was brought into the main Guard Room and placed under close arrest. I saw no blankets in the back of the truck. I did not see in the back of the truck. I rode back to barracks in the front of the truck. Cpl FARRANCE drove. I was never in the back of the truck. I was not in the back when it was driven from its parking place to the Archway. I remember walking with Cpl FARRANCE into Cafes. He could manage O.K. I talked with him. I could understand him. He appeared to be in a very happy mood. He seemed to handle the veh all right. I was with the truck all the time except when in the cafes. All 3 of us went into cafes together. During those times the truck was unattended outside. We went to 5 cafes at the most. We visited them from from 0130 hrs to 0330. We had something to drink in each.

..../5

No cross-examination.

By the Court.: The truck was unattended at one time while we had 3 drinks apiece in one cafe. We were in that cafe approx 25 minutes. All three of us were together all the time from the time we left until we returned to the Barracks.

RP 83(b) complied with.

Motion by Defence: I would like to submit that in the case of Cpl FARRANCE and Cpl WILSON that the 3rd and 4th Charges be dismissed. and that the trial so far as they are concerned proceed on 1st and 2nd Charge. In the case of Pte HAGGERTY that the 1st 2nd, 3rd 4th Charges be dismissed. This motion is made on the grounds that the prosecution has not est a prima facie case.

Reply by the Prosecution

In reply to the motion re the cases against the Cpls There is evidence before the Court that blankets were seen in the rear of the truck which the 2 Cpls and HAGGERTY took from the premises that evening. They were certainly in improper possession of them. Re the 3rd Charge perhaps I have not satisfied you on question of intent, but 1st of all we have evidence of CQMS who describes where blankets were taken from. He also states Cpl FARRANCE & Pte HAGGERTY had been in his stores while they were piled there. All 3 men are attd to 42 Coy. On that night blankets are stolen from 42 Coy Stores. Later these 3 leave the area in the rear of which truck are blankets, army issue. There is evidence to put them on their defence. The prosecution have est a prima facie case on 3rd and 4th Charges. Especially in a joint trial it is more so. The 2nd motion is a motion which at this stage would aquit HAGGERTY of 1st - 4 Charges. If you believe him then you can believe his part was from archway on. If that is so he is liable under 1st & 2nd Charge. I suggest both motions be disallowed.

D-6

1st WITNESS FOR THE DEFENCE C-64119 Pte (A/Cpl) FARRANCE, G.W. - N Shore R 10 Bn 2 CBMG, having been duly sworn states:-

On afternoon of 4 Jan 45 Cpl WILSON and I sat down to do a little drinking. The reason I wanted to drink was I had been under a heavy strain for the preceding 6 weeks. I had worked very hard to attain a Supervisorship with the Cdn Legion. Through my own stupidity on Xmas Day I was sent to 10 Bn [illegible] for close arrest. I was sitting around barracks for a week when the New Year Rolled around. Time was heavy and I wanted to alleviate the situation. I suggested I would like a bottle of cognac or whatever I could get to drink and I asked one of the chaps in the room if he would go out and get me a bottle. He did. Eventually I know I had paid for 4 bottles. I remember opening the 4th bottle. At the time, approx 2200 hrs all the chaps prepared to go to bed. It was sometime after that Cpl WILSON & I were discussing our length of service. I remember I jokingly remarked to Cpl WILSON that he had not come in on D-Day. Cpl WILSON was going to break the bottle over my head for accuseing me of such. I don't know what time it was then but I believe I suggested we go out and get another drink. I remember going tinto 2 Cafes and I remember leaving a 3rd Cafe. I can't recall anything more until I awakened in the Guard Room at breakfast time wondering how I got there.

..../6

Have been in the Army since June 1940. I came into France on D-Day I was at 10 Bn Xmas. I wasn't wounded. I was told that my category was too low to return to the Unit. I would like to return to my Unit.

Cross-examination: I remember going to a cafe in a veh. I can't remember getting into a veh. I remember when we came out of the 1st cafe the Cdn Legion Truck was standing there. I don't remember being concerned in having difficulty starting the veh. Cpl WILSON & Pte HAGGERTY were with me when we came out of the 1st cafe. I don't remember driving the truck down there. If someone said I drove it there I wouldn't deny it. I was trying hard to get into the Legion work. I was working for the Legion in GHENT at that time. I had driven this truck before. I know how it was immobilized. When I came out of the cage the truck I got into was the Aux Services truck. I had no permission to take the truck, I was under close arrest. I recall nothing about blankets except blankets out of my own bed. I know nothing whatever about blankets in the truck. I did not know about the new storeroom. I did not know where Coy QM Stores are. The Coy had been changed around. I did not know there was a room like the QM Stores described here to-day. It is possible that I might have gone down to that room. Cpl WILSON and I and the chap who went to get the bottle for me each time were the only ones that did the drinking. That chap is now dead. He died in the barrack room.

RP 83(b) complied with.

2nd WITNESS FOR THE DEFENCE

C-80238 Cpl WILSON, G. is recalled and examined by the Defending Officer.

I have been in Army approx 3 years. I came to France on D-Day. I was wounded in the Falais Pocket and evacuated to U.K. I am eligible to return to my Unit. I have been after the Draft Sgt to get me out of GHENT and back up to my Unit. Returned from U.K. the latter part of October.

RP 83(b) complied with.

3rd WITNESS FOR THE PROSECUTION

A-22435 Pte HAGGERTY, H., is recalled & examined by the Defending Officer.

I have been in the Army since 27 June 40. I landed in France a month after D-Day as a rft. I served with my Bn in action. I was wounded in action. I was in Hosp for 17 days and convalescent for 2 weeks. Returned to GHENT around the end of October. I am eligible as a rft for the Bn. I desire to return to the Bn. I am 22 years old.

RP 83(b) complied with.

DEFENDING OFFICER'S CLOSING ADDRESS:

There are 3 soldiers before you. They are from one of the best division in the Cdn Army. You will bear this in mind and have a sympathetic outlook. Our real quarrel is not with the 1st 2 charges. You are reasonable men and will find justice done. The 3rd Charge deals with theft and 4th with improper possession. No witness said anything about 25 blankets. No witness saw 25 disapp ar from the QM Stores. As many as 40 had been disappearing in those barracks daily. It was a common thing and no records were kept in QM Stores. Two witnesses said they saw blankets in the back of the lorry. They knew not what was in the back of the lorry. My remarks re the 4th Charge are the same. It is difficult to prove that items were there improperly.

..../7

In military life people find odd things in their kits, billets etc. You as a Court take grave responsibility in convicting under those charges. The defence will file a Petition if a conviction is found. These remarks are re the Cpls. Now we come to HAGGERTY. He is very young. We admire his spunk in serving his country. He is the innocent bystander and I ask you to dismiss on all 4 counts. Cpl from NB Regt is U-3 - collapsed in battle with heart condition. Cpl from CH of O wears a wound stripe and wants to get back. So does the Pte.
You must weigh, as soldiers, what must be the least possible penalty and what must be done to win the war. To sum up. As far as 2 Cpls are concerned I ask for dismissal on 3 & 4 Charges. I ask you to dismiss on all 4 counts for the Pte.

CLOSING ADDRESS BY THE PROSECUTION

We must return to the facts as proven at the trial today. I feel that in view of 1st 2 Charges for Cpls the Defence leaves it up to you. It is virtually a plea of guilty; re 3 and 4 charges and the Cpls. What is their defence? It is one of drunkeness. They must satisfy the Court the nature of the act they were doing and the consequences. The evidence hereto-day bears that out. Pte HAGGERTY is most fair and his words do not indicate that state of drunkeness. Neither do any of the other witnesses. Contrarily we find 3 persons leaving LEOPOLD BKS in a truck with Blankets in the rear. They were folded. Three of them spend a lot of time driving around, visiting cafes and they return without the blankets. These are the facts. The accused all belonged to 42 Coy. The blankets are missing from there and a truck with blankets leaves the Barracks driven by the accused. A special finding can be made re the actual number of blankets missing. The 3rd Charge - theft - The evidence is not too strong. Generally on this trial. Not story of anyone witness that makes up the Pros case. It is complete story that is presented here. A Court must act on the balance of probabilities. Taking all circumstances into consideration, what most probably happened. The position of Pte HAGGERTY. You may believe him and disbelieve the Guard on the gate. He entered the scene when? According to conflicting evidence it is 0130. Pte HAGGERTY and the 2 Cpls shove the truck and takes part in the evening's affair from there on. I can't see how he can claim innocence of an act at such an hour in the a.m. He knew what was going on and he chose to take part in it. 1st & 2nd Charges against Pte HAGGERTY cannot be dismissed. If you disbelieve the guard at the gate then you must believe Pte HAGGERTY and his story about not being in the back of the truck. There is a perfectly sound case here against all 3 on 1st & 2nd Charge and on the 1st Charge. In case of Cpls a sound case on either 3 or 4 Charges depending on which witness you believe.

The Defence does not desire a reading of the Summary of Evidence in the last Charge(5th Charge) on which all have pleaded guilty.

E - 9

PLEAS IN MITIGATION.

NIL.

Ex 'C'

ARMY FORM B.296 (WAR)

Statement as to Character and Particulars of Service of Accused.

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

Number.	*Rank.*	*Name.*	*Regiment (or as the case may be).*
C-64119	Pte(A/Cpl)	FARRANCE, G.W.	16 Cdn Base Rft Bn

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

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

For Original MFM 6 not available ..... times.

For ////////////////////////////////// ..... times.

For ////////////////////////////////// ..... times.

For ////////////////////////////////// ..... times.

Date of first entry in ~~Field Conduct Sheet~~ .....

Date of last entry in ~~Field Conduct Sheet~~ .....

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

*3. ~~The accused at the present time is under sentence for~~ .....

~~beginning on the~~ ~~day of~~

*Strike out if not applicable.

4. The accused has been awaiting trial on the present charges for NIL days in civil custody; and for 40 days in military custody, *i.e.*, NIL days in open arrest, 40 days in close arrest; of which NIL days were spent in hospital.

5. The present age of the accused is 34 yrs 7 mos 19 days

6. The date of his attestation ~~enlisting up for military service~~ is 5 May 42

7. The service which the accused is allowed to reckon is 3 yrs 8 mos 29 days

8. The accused is in possession of† CVSM & Clasp

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

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

Date of Promotion.

In the substantive rank of .....

In the war substantive rank of .....

In the acting rank of .....

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

(23594) Wt.42128/4399 42,000 11/44 A. & E.W.Ltd. Gp.698 Forms/F.2 6/War/44

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

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

T.O.

No. 7-64119 Name FARNHOE, O.W. Sqn. Battery, or Company

Date of last entry in Company Conduct Sheet

No and date of last drunk

Place	Date of offence	Rank	Date of drunken case

TEMP SHEET

Ex "E" DM

ARMY FORM B.296 (WAR).

Statement as to Character and Particulars of Service of Accused.

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

Number.	*Rank.*	*Name.*	*Regiment (or as the case may be).*
C-30238	Cpl	WILSON, G	10 Cdn Base Rft Bn

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

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

For Original MFW 6 not available ____ times.

For //////////////////////// ____ times.

For //////////////////////// ____ times.

For //////////////////////// ____ times.

~~Date of first entry in Field Conduct Sheet~~

~~Date of last entry in Field Conduct Sheet~~

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

*Strike out if not applicable.

~~*3. The accused at the present time is under sentence for~~

~~beginning on the day of~~

4. The accused has been awaiting trial on the present charges for NIL days in civil custody; and for 40 days in military custody, *i.e.*, NIL days in open arrest, 40 days in close arrest; of which NIL days were spent in hospital.

5. The present age of the accused is 27 yrs 7 mos 25 days

6. The date of his attestation ~~calling up for military service~~ is 21 May 42

7. The service which the accused is allowed to reckon is 2 yrs 8 mos 13 days.

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

8. The accused is in possession of† CVSM & Clasp

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

Date of Promotion.

In the substantive rank of //////////////////// ____

In the war substantive rank of //////////////////// ____

In the acting rank of //////////////////// ____

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

(28/94) W1.4212/M.4299 42,000 11/44 A.S.& W.Ltd. Gp.698 Forms/B.2.6(War)/4

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

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

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

Signed this ninth day of February "A M Arthur" Capt

No C-80238 Name WILSON, G. | Sqn, Battery, or Company | T.O.S. - 11 Nov 44 Corps CIC | Date of enlistment 21/5/42 | GC Badges | Service or Proficiency Pay | Ex 'D' "DIH"

MFM 6
(ATB 122)
40/PA/8/130 (9438)

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

Place	Date of offence	Rank	Cases of drunkenness	OFFENCE	Names of Witnesses	Punishment awarded	Date of award or of order dispensing with trial	By whom awarded	Remarks
				TEMPROARY SHEET					
				"A M Arthur" Capt					

(PTO)

Ex "G" DM

ARMY FORM B.296 (WAR)

Statement as to Character and Particulars of Service of Accused.

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

Number.	*Rank.*	*Name.*	*Regiment (or as the case may be).*
A-22435	Pte	HAGGERTY, H	10 Can Base Rft Bn

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

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

For AA Sec 15(1) 6 times.

For AA Sec 9 (2) 1 times.

For AA Sec 40 2 times.

For AA Sec 24(2) 1 times.

Date of first entry in Field Conduct Sheet .....

Date of last entry in Field Conduct Sheet .....

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

~~*3. The accused at the present time is under sentence for .....~~

~~beginning on the ..... day of .....~~

*Strike out if not applicable.

4. The accused has been awaiting trial on the present charges for NIL days in civil custody; and for 40 days in military custody, *i.e.*, NIL days in open arrest, 40 days in close arrest; of which NIL days were spent in hospital.

5. The present age of the accused is 22 yrs 3 mos 4 days

6. The date of his attestation ~~enlistment~~ is 27 Jun 40

7. The service which the accused is allowed to reckon is 4 yrs 7 mos 6 dys

8. The accused is in possession of ‡CVSM & Clasp

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

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

Date of Promotion.

In the substantive rank of .....

In the war substantive rank of .....

In the acting rank of .....

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

(29594) Wt.42129/4599 42,000 11/44 A.R.E.W.Ltd. Gp.698 Forms/T.2 S(War)/4

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

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

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

Signed this Ninth day of February 1943

"A N Arthur" Capt

Ex "F" Wing

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

No A-22435 Name HAGARTY, H.F. | Sqn, Battery, or Company | Corps CIC | Date of enlistment 27-6-40 | GC Badges | Service or Proficiency Pay | Character

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

Previous Sheet destroyed on completion 6 months service 27-12-40 Entried Nil (F.L.L.)

Place	Date of offence	Rank	Cases of drunkenness	OFFENCE	Names of Witnesses	Punishment awarded	Date of award or of order dispensing with trial	By whom awarded	Remarks
				Nil.					
Hamilton	2-9-41	Pte		The accused is charged with AWL from 0800 hrs 2-9-41 till 1700 hrs 2-9-41 Total absence 9 hrs AA Sec 15(1) Open arrest.	Sjt Cullen B	4 days CB	3-9-41	Major J.H. Duthie	1 days pay FR&I 149(1)(a)
Hamilton	6-10-41	Pte		AWL from 1600 hrs 16-10-41 till 1330 hrs 17-10-41. Total absence 21 hrs 30 mins A.A. Sec 15 Para 1.	Cpl Bowden	4 days CB	18-10-41	Major J.H. Duthies	1 days pay FRI 149(1)(a)
Hamilton Ont	12-9-42	Pte		The accused is charged with disobeying an order in that he at Hamilton on the 12th Sept when ordered to go to the Officers's Mess to wash dishes "Replied/ I will not wash dishes in the Officer's Mess. Close Arrest A.A. Sec 9(2)	CSM Callaghan/ Sjt Eggett.G/ Pte Lebahan	10 days CB	14-9-42	Major J.H. Duthie	

(PTO)

Place	Date of offence	Rank	Cases of drunkenness	OFFENCE	Names of Witnesses	Punishment awarded	Date of award or of order dispensing with trial	By whom awarded	Remarks
Hamilton Ont	16-11-42	Pte		The accused is charged with absenting himself without leave from the expriation of his pass 0800 hrs until 1715 hrs 16-11-42 Total absence 9 hrs 15 mins)	Sgt Bowden W Pte Coutts	4 days CB	18-11-42	Major J.H. Duthie	Forfeits 1 days pay F.R.I. 149(1)(a)
Hamilton	25-1-43			Certified last entry to date.					
Camp Borden	22-3-43	Pte		A.A. Sec 40 COND TO THE PREJ Unshagen on parade.	Pte Bremner G	3 days CB	23 Mar 43	Major G.A. DADDS	

Place	Date of offence	Rank	Cases of drunkenness	OFFENCE	Names of Witnesses	Punishment awarded	Date of award or of order dispensing with trial	By whom awarded	Remarks
Field	26-11-43			WOAS 2nd to the pred . etc. in that he appeared on parade unshaved afte being duly warned. A.A. Sec 40.					
Field	16 Apr44	Pte		A.A. Sec 15(1) WOAS AWL FROM 2359 hrs 16-4-44 until 0730 hrs 17 Apr 44. (Time absent 7 hrs 31 mins)	Sgt Wiseman Cpl Lyle R Documentary	5 days C.B. Summary forf 1 days pay.	17 Apr 44	P. Palmer Major	Forf 1 days pay F.R.I.179(1)(a)

No A-22435 Name HAGARTY, H.F. Sqn, Battery, or Company — Corps GIC — Date of enlistment 27 Jun 40 GC Badges — Service or Proficiency Pay

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

Date of last entry in Company Conduct Sheet 22 Mar 43 — No and date of last drunk — Period not reckoning towards freedom from extra fine — Sheet No 2. — Signature OC Company, etc — Character

Place	Date of offence	Rank	Cases of drunkenness	OFFENCE	Names of Witnesses	Punishment awarded	Date of award or of order dispensing with trial	By whom awarded	Remarks
A-11 CITCCA	29 Mar 43	Pte		A.A. Sec 24(2) LOSING BY NEGLECT HIS CLOTHING EQUIPMENT AND REGIMENTAL NECESSARIES. I.E. 1 Pr Boots Ankle valued at $1.36 (Open arrest)	CQMS Gray J.	ADMONISHED	30 Mar 43	Major C.A. Dodds	Stoppage of pay to the amount of $1.36
Camp Borden	4-4-43	Pte		AWL from 17-4-43 at 12-- hrs until 0215 hrs 27-4-43 Total absence 9 days 14 hrs 15 mins A.A. Sec 15(1) Close Arrest.	Cpl Bust L/Cpl Young	10 days pay F.R.I.149(2)	27-4-43	Lt-Col	10 days pay FRI 149(1)(a)

(PTO)

No. 22435 Name HAGARTY, H.F. | Sqn, Battery, or Company | Corps CIC (MG) | Date of enlistment 27-6-40 | GC Badges | Service or Proficiency Pay | MFM 6 (AFB 122) 40/P&S/136 (3438)

Date of last entry in Company Conduct Sheet | No and date of last drunk | Period not reckoning towards freedom from extra fine | Sheet No 3. | Signature OC Company, etc | Character

Place	Date of offence	Rank	Cases of drunkenness	OFFENCE	Names of Witnesses	Punishment awarded	Date of award or of order dispensing with trial	By whom awarded	Remarks
Field	21-10-44	Pte		A.A. Sec 15(1) AWL from 0515 hrs 31 Oct 44 until 1030 hrs 31 Oct 44 Absent 5 hrs 15 mins)	Sgt Francis	14 days CB	1 Nov 44	Lt-Col A.T. Law	

CERTIFIED TRUE COPY

"A W Arthur" Capt
Officer i/c Regimental Books

(PTO)

Ex A
Atty

SUMMARY OF EVIDENCE

In the case of C-64119 Pte (A/Cpl) George William FARRANCE on the strength of 42 Coy, 10 CBR Bn, a soldier of the Canadian Army Overseas.

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

FIRST WITNESS
Prosecution.

C-80238 Cpl WILSON, G (CH of C) of 42 Coy on strength of 10 CBR Bn., having been duly sworn states:-

I am C-80238 Cpl WILSON, G (CH of C) of 42 Coy on strength of 10 CBR Bn. On the night of 4th Jan 1945 at approx 1530 hrs the accused, whom I now recognize, (C-64119 Pte (A/Cpl) Farrance, G.W.) and I started to drink cognac in room 11, 42 coy lines. I remember nothing else.

Q. You have no idea how long you were drinking?
A. No Sir.

Q. Do you remember taking or riding in a truck?
A. I could not swear to that; but I have a vague idea of bouncing around sometime on the night of 4 Jan 1945 and that is all, sir.

RP 83(b) complied with.

"G Wilson"
(G Wilson) Cpl C-80238

Accused declines to cross examine the witness.

SECOND WITNESS
Prosecution

A-22435 Pte HAGARTY, F (CH of C) of 42 Coy on strength of 10 CBR Bn having been duly sworn states:

I am A-22435 Pte HAGARTY, F (CH of C) of 42 Coy on strength of 10 CBR Bn. During the night of 4/5 Jan 1945 I came out of a lavatory of 10 Bn Orderly Room block and a truck was stall d in the arch. I walked to the front of the truck and watched the accused, whom I now recognize try to start it. When they decided to push it to get it to start, I gave them a hand. We pushed it about a block but it didn't start. Finally the accused got it started. There were two Cpls in the truck and one of them, (I don't know which one) asked me if I'd like a ride. I got in the front of the truck and we drove around town and stopped for a few drinks.

Q. Were you every in the back of the truck?
A. No Sir.

Q. When you pushed the turck did you notice any blankets in it?
A. No sir.

Q. Did you return in the truck?
A. Yes Sir.

Q. Who was driving at that time?
A. The accused, whom I now recognize.

Cross examination by the accused.

Q. Would you say when you met, whether we were drunk or sober?
A. Yes, you had been drinking.

Q. Could you see it was just a ride around town for drinks, or if there was any other purpose?
A. I could see no purpose other than going for drinks.

Q. Did you at anytime during the night see us stop anywhere where we could sell blankets, or did you see us take blankets from the back of the truck?
A. I did not.

...../2

Q. You were with us from the moment we left the main gate until we returned?
A. Yes.

RP 83(b) complied with.

"H Hagarty"
(F Hagarty) Pte A-22435

THIRD WITNESS
Prosecution

K-4116 Pte MORELLI, J. (R Regt C) of 49 Coy on strength of 10 CBR Bn., having been duly sworn states:

I am K-4116 Pte MORELLI, J. (R Regt C) of 49 Coy on strenght of 10 CBR Bn On the morning of 5th Jan 45 I was on duty, at the main gate to LEOPOLD BARRACKS, as Refu'l Police. At 0130 hrs 5 Jan 45 the accused, whom I now recognize, came to the gate driving an Aux Services truck and stopped. I never asked him for a work ticket, because I was never instructed to ask for work tickets from the Aux Services. The truck stall d and it took the accused a few minutes to get it started, and during this time we cracked a few jokes; it was then I noticed some blankets in the back of the truck. There was a Cpl and a Pte belonging to the CH of O in the truck with the accused. The Cpl was in the front with the accused and the Pte was in the back. I asked the accused where he was going and he said he was going to a dance.

Q. Did you question the accused regarding the blankets?
A. I asked him where he was going with the blankets, and he said they'd been in the truck a week or more. I told him he should have a chit to take them out.

Q. Would you recognize the Cpl and Pte if you were to see them again?
A. Yes Sir.

Q. Were you there when the accused returned?
A. Yes Sir, but I was off duty for four hrs at that time.

Q. What time was that?
A. About 0330 hrs sir.

Q. What happened then?
A. Pte Grose took their names and nymbers and turned them over to the RPs of 10 Bn

RP 83(b) complied with.

Cross examination by the accused.

Q. Would you say I had been drinking?
A. No I would not say you were drinking.

"J Morelli"
(J Morelli) Pte K-4116

FOURTH WITNESS
Prosecution

C-122549 Pte GROSE, G F (CIC) of 48 Coy on strength of 10 CBR Bn., having been duly sworn states:

I am C-122549 Pte Grose, G F (CIC) of 48 Coy on strength of 10 CBR Bn. On the morning Jan 5, 1945 at 0030 hrs, on my return from the Bn Kitchen, the Orderly Officer of the day had left orders to apprehend the Cdn Legion truck in charge of Cpl Farrance with two men and place them under close arrest, which I carried out at approx 0330 hrs of Jan 5. On the return there were two Cpls and one Pte. The Pte was riding in the front of the truck.

Q. Were there any blankets in the truck on its return?
A. No, there were none.

Q. Who was driving the truck?
A. The accused whom I now recognize.

...../3

FOURTH WITNESS
Prosecution
(cont'd)

Cross examination by the accused.

Q. Are you willing to swear that those are the correct times?
A. Yes they are all approx.

Q. Would you say I had been drinking?
A. You had been drinking.

RP 83(b) complied with

(G F GROSE) Pte C-122549

FIFTH WITNESS
Prosecution

D-126481 Cpl Whitaker, J. (RCASC) of 14 CWLS, attached to 10 CBR Bn., having been duly sworn states:-

I am D-126481 Cpl Whitaker, J (RCASC) of 14 CWLS, attached to 10 CBR Bn. At approx 2230 hrs 4 Jan 45 I parked my truck and immobilized it in front of 10 Bn Orderly Room Block. At approx 0230 hrs 5 Jan 45 the Ord Sgt and RP Sgt woke me up and asked me the number of the Aux Services truck, or any identification markings of the same. They went to identify a truck and came back 10 minutes later and told me that my truck Ford 60 cwt No CL-4269003 was missing. At 0830 hrs 5 Jan 45 I found my truck parked in the accustomed place. I found nothing missing or anything damaged, but the truck was not immobilized. I am in complete charge of the Aux Ser truck and I did not authorize the accused to drive same that night.

Q. When you parked your truck on the night of 4 Jan 45 were there any blankets in the back?
A. No sir.

Q. Was there anything left in the back of the truck?
A. No sir.

Q. You found nothing missing on the morning of the 5 Jan 45?
A. No sir; nothing missing.

RP 83(b) complied with.

"Cpl Whitaker J"
(J WHITAKER) Cpl D-126481

The accused declines to cross examine the witness.

SIXTH WITNESS
Prosecution

B-46477 CQMS RICHARDSON, R H (A&S Highrs) of 42 Coy on strength of 10 CBR Bn, having been duly sworn states:

I am B-46477 CQMS RICHARDSON, R H (A&S Highrs) of 42 Coy on strength of 10 CBR Bn. Between the hours of 2230 4 Jan 45 and 0630 hrs 5 Jan 45, approx 25 blankets were stolen from my store-room, by means of a ventilator. I have since taken precautions so this will not happen again.

Cross examined by the accused.

Q. How large is this ventilator?
A. Approx 10" by 12".

Q. Would you say it was 10" X 12" in a 12" wall?
A. Those are approx measurements.

Q. You heard no sound at that time?
A. I heard no sound.

Q. Do you sleep in the stores?
A. I sleep in the rear of the stores.

RP 83(b) complied with.

"R H Richardson"
(R H Richardson) CMQS B-46477

SEVENTH WITNESS
Prosecution

K-40916 Sgt MORRISON, G.A. (HQ Coy) on the strength of 10 CBR Bn having been duly sworn states:-

I am K-40916 Sgt MORRISON, G S(HQ Coy) on the strength of 10 CBR Bn I was BOS from reveille 4 to reveille 5 Jan 45. At approx 0145 hrs the 5 Jan 45 Sgt Francis brought to my attention that the accused whom I now recognize, was absent from barracks and was suspected of having the Legion truck. On checking of 42 Coy barrack rooms, with Sgt Francis, I found that the accused was absent; we also checked the vehicle park, the Legion, and with the Guard Room; and found the Legion truck was gone. At the Guard Room the R.P on duty said the Legion truck went out with a Cpl answering the description of the accused.

Q. Are you familiar with the "Instructions for the Guard?
A. Yes Sir - I submit herewith a copy of same.

Q. Are you familiar with the statement in these Instructions for the Guard which state: Every veh entering or leaving the bks will be stopped. If leaving the work ticket will be carefully scrutinized to ensure that it is a duly authorized journey that the work ticket is signed by proper authority?
A. Yes Sir.

RP 83(b) complied with.

"G A Morrison"
(G A Morrison) Sgt K-40916

Accused declines to cross examine the witness.

DOCUMENTARY EVIDENCE

Instructions for the Guard dated 23 Oct 44 accepted as documentary evidence, was read over to the accused, marked Exhibit "A" and signed by me.

(J F Juby) Lt
CH of O - 10 CBR Bn
Officer detailed to take
Summary of Evidence.

EIGHTH WITNESS

L-22849 Sgt FRANCIS, V R (RCE) of 42 Coy on the strenght of 10 CBR Bn having been duly sworn states:

I am L-22849 Sgt FRANCIS, V R (RCE) of 42 Coy on the strenght of 10 CBR Bn. At approx the hour of 0130, 5th Han 45 on infm received, I investigated and found the accused, Cpl Farrance, whom I now recognize, to be missing from bar racks, when he was under close arrest, with his escort Cpl Wilson, who was also missing. I reported this matter to the BOS (Sgt Morrison). Together we investigated further and found that the accused, his escort, and one other man, to be absent. We investigated the truck and found, that the Legion truck was missing. We informed the Ord Officer, and the Gate Guard. We were informed by the guard that the Legion vehicle with three men had passed through the gate.

Q. What was the infm received?
A. That three men with a vehicle and blankets had departed from the barracks.

Cross examination by the accused.

Q. Who gave you the infm that the truck, three men and blankets were missing?
A. I will not answer that question, because I still wish to find out where equip and personal effects are going, and if I reveal the source of my infm I will naturally lose this contact.

RP 83(b) complied with.

"V R Francis"
(V R Francis) Sgt L-22849

The accused having been cautioned as follows; "Do you wish to make a statement or given any evidence on oath? You are not obliged to say anything or to give any evidence unless you wish to do so, but whatever you may say, or any evidence you may give will be taken down in writing and may be used in evidence", deelines to give any evidence and reserves his defence.

I certify that the foregoing summary of evidence consisting of five(5) pages was taken down in writing by me, in the presence and hearing of the accused.

I certify that RP 4(c) (D) (e) and (f) have been complied with.

"J F Juby"

(J F Juby) Lieut
CH of O - 10 CBR Bn
Officer detailed to take
Summary of evidence.

Exhibit A
J Sgt Judge Adv

INSTRUCTIONS FOR THE GUARD

Dnr

23 Oct 44

1. NO rft personnel, and NO P.E. personnel (OR) will be allowed to go out of the gate before 1630 hrs daily, except Sunday, unless in the possession of a pass or chit signed by the C.O. 2 i/c or Adjt of 10 or 11 CBR Bn, or unless on a duty with parade under the Comd of an Offr or Senior NCO. On Sunday, personnal may be permitted to leave at 1200 hrs.

2. Every veh entering or leaving the bks will be stopped. If leaving, the work ticket will be carefully scrutinized to ensure that it is a duly authorized journey that the work ticket is singed by the proper auth. (in the case of 10 CBR Bn by the CO, 2 i/c, Adjt or QM, ONLY, in the case of 11 CBR Bn by the CO, 2 i/c Adjt or QM and that the time OUT on the work ticket corresponds approximately with the time the veh passes the gate. This will be an invariable procedure for all mil vehs except those used by Belgian tps and their sentry must be prepared to authorize the passage of all such vehs. Vehs driven by the O.C., 2 i/c, or Adjt of 10 or 11 Bn may be allowed exit without examination of work ticket, but ONLY provided the sentry recongizes the offr concerned. Sentries will examine the contents of all other than 10 or 11 Bn to ensure that property of those units is NOT being taken out of the camp. ANY question regarding the above matters will be referred to the Adjt of either 10 or 11 CBR Bn and the veh held in the parade square until it is decid

3. Paybooks of all personnel entering the bks after 2200 hrs daily, will be checked and a list of reftl particulars unit and coy of rft bn noted. The same applies to personnel entering without pass before 1630 hrs daily except Sunday. The above particulars will be handed in to Adjts of 10 and 11 CBR Bns daily at 0900 hrs.

4. Passes will be collected at the gate and handed in to respective Adjts at 0900 hrs daily. It is noted that NO pass is valied unless it has the stamp of the Bn Orderly Room on it.

5. Sentries will NOT all personnel to loiter at the entrance. This applies to all civilians as well as to soldiers.

6. No peddlers will be allowed inside the bks area.

7. Only civilians possessing duly authorized passes or certified by the Belgian sentry will be allowed to enter the bks.

8. Provost Sgts of each bn will be responsible for change of sentries at duly auth intervals.

9. If it is necessary to escort personnel to the gd room at any time, only ONE sentry will leave the gate to do so. He will NOT leave the gate for any other purpose.

10. The Guard has the auth to check and examine any parcel or bundle that personnel may be carrying out of the barracks.

(Signed)
"C M G Arthurs"
(C M G Arthurs) Capt
Adjt, 10 CBR Bn

"F W Pardee"
(F W Pardee) Capt.,
Adjt, 11 CBR Bn

SUMMARY OF EVIDENCE

In the case of C-80238 Cpl Grenvills WILSON (CH of O) on the strength of 42 Coy, 10 CBR Bn., a soldier of the Canadian Army Overseas.

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

FIRST WITNESS
Prosecution

L-22849 SgtFRANCIS, V R (RCE) of 42 Coy on the strength of 10 CBR Bn. having been duly sworn states:

I am L-22849 Sgt FRANCIS, V R(RCE) of 42 Coy on the strength of 10 CBR Bn. On the morning of Jan 5 at approx 0130 hrs, in infm received I investigated and found the accused, whom I now recognize, to be missing. I informed the BOS (Sgt Morrison) and we investigated further in the barracks and when the accused could not be found we reported it to the Bn Orderly Officer. We investigated the vehicle which was reported missing and informed the provost at the gate.

Q. Was the accused on duty?
A. Yes sir, he was, as escort to Cpl Farrance, who was under close arrest.

Q. What was the infm received?
A. That three men with a vehicle and blankets had departed from the barracks.

RP 83(b) complied with.

"V R Francis"
(V R Francis) Sgt L-22849

Accused declines to cross examine the witness.

SECOND WITNESS
Prosecution

K-40916 Sgt MORRISON, G A (CIC) of HQ Coy on the strength of 10 CBR Bn., having been duly sworn states:

I am K-40916 Sgt Morrison, G A(CIC) of HQ Coy on the strength of 10 CBR Bn. I was BOS from reveille the 4 to reveille the 5 Jan 45, Sgt Francis brought to my attention at approx 0145 hrs 5 Jan 45, that the accused, whom I now recognize, was absent from barracks and believed to be with the Legion truck. On checking of the barrack rooms of 42 Coy, also checking with the vehicle park and Guard Room, we found that a Cpl answering the description of the accused was with the Legion truck, when it went out.

RP 83(b) complied with.

"G A Morrison"
(G A Morrison) Sgt K-40916

Accused declines to cross examine the witness.

THIRD WITNESS
Prosecution

K-4116 Pte MORELLI, J (R Regt C) of 49 Coy, on the strenght of 10 CBR Bn, having been duly sworn states:

I am K-4116 Pte Morelli, J (R Regt C) of 49 Coy, on the strength of 10 CBR Bn. At 0130 hrs 5 Jan 45 I was on duty at the main gate, as a member of the RP, when the accused, whom I now recognize, came to the gate in the Legion truck, accompaneid by a Cpl and a Pte.

Q. Did you examine the truck?
A. Not exactly, I didn't examine it, I just happened to look in the back of the truck and it was then I saw some blankets, and the Pte riding in the back.
Q. Did the truck leave the barracks?
A. Yes Sir.

2.....Cross examination by the

THIRD WITNESS
Prosecution
(Cont'd)

Cross examination by the accused.

Q. Did nothing strike you as strange about a truck going out at that time of night or early morning?
A. No. not the Legion truck, because the Legion truck travels at all hours.

Q. You just seen "some" blankets?
A. I never mentioned any number of blankets, I just saw a few.

Q. Could you see the wole interior of the truck?
A. No

Q. That was the sum total of your investigations, just peering into the rear of the truck?
A. Yes.

RP 83(b) complied with.

"J Morelli"
(J Morelli) Pte K-4116

FOURTH WITNESS

C-122549 Pte GROSE, G F (CIC) of 48 Coy, on the strength of 10 CBR Bn., having been duly sworn states:

I am C-122549 Pte Grose, G F (CIC) of 48 Coy on the strength of 10 CBR Bn. At approx, from 0030 to 0130 hrs of Jan 5, 1945 on return from 10 Bn Kitchen I was informed by the Orderly Officer of the day, to apprehend the Gin Legion truck in charge of Cpl Farrance with two men and place them under close arrest, which I carried out at approx 0330 hrs of Jan 5, 1945. The men, I charged with improper possession of the vehicle. Cpl Wilson, whom I now recognise, was in the truck at the above mentioned time.

Q. Was Cpl Wilson one of the men you arrested?
A. Yes.

Q. Where was he riding?
A. In the front seat.

RP 83(b) complied with.

"G F Grose"
(G F Grose) Pte C-122549

Accused declines to cross examine the witness.

FIFTH WITNESS
Prosecution

B-46477 CQMS RICHARDSON, R H (A&S Highrs) of 42 Coy, on the strength of 10 CBR Bn, having been duly sworn states:

I am B-46477 CQMS Richardson, R H (A&S Highrs) of 42 Coy, on the strength of 10 CBR Bn. Between the hours of 2230 hrs 4 Jan 45 and 0630 hrs 5 Jan 45 approx 25 blankets were stolen from my stores, by means of a ventilator near which the balnkets were piled. Steps have been taken to eliminate a reoccurence of such a theft.

RP 83(b) complied with.

"R H Richardson"
(R H Richardson) CQMS B-46477

Accused declines to cross examine the witness.

SIXTH WITNESS
Prosecution

D-126481 Cpl WHITAKER, J. (RCASC) of 14 CLWS attached to 10 CBR Bn having been duly sworn states:

I am D-126481 Cpl Whitaker, J (RCASC) of 14 CLWS att to 1o CBR Bn. At approx 2230 hrs 4 Jan 45 I parked my truck and immobilized same in front of 10 CBR Bn Orderly Room. At ap rox 0230 hrs 5 Jan 45 the Orderly Sgt and the RP Sgt woke me up and asked me the number of my Aux Service truck or any identification markings of same. They went out to identify a truck and came back 10 minutes later and told me my truck was missing. My truck is a Ford 60 cwt No CL-4269003. I am in complete charge of same and did not authorise anyone to drive same that night. There was no balnkets in my truck when I parked it at 2230 hrs 4 Jan 45. Next morning at 0800 hrs 5 Jan 45 I found my vehicle, examined it, and found nothing missing and there were no blankets in the back.

RP 5(b) complied with.

"Cpl Whitaker J"
(J Whitaker) Cpl D-126481

Accused declines to cross examine the witness.

The accused having been cautioned as follows: "Do you wish to make a statement or give any evidence on oath? You are not obliged to say anything or to give any evidence unless you wish to do so, but whatever you may say or any evidence you may give, will be taken down in writing and may used in evidence", declines to give any evidence and reserves his defence.

I certify that the foregoing summary of evidence consisting of three (3) pages was taken down in writing by me, in the presence and hearing of the accused.

I certify that RP 4 (c) (d) (e) and (f) have been complied with.

"J F Juby"
(J F Juby) Lt
CH of O - 10 CBR Bn
Officer detailed to take
Summary of Evidence.

SUMMARY OF EVIDENCE

In the case of A-22435 Pte Harold HAGGARTY (CH of O) of 42 Coy, on the strength of 10 CBR Bn, a soldier of the Canadian Army Overseas.

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

FIRST WITNESS
Prosecution

L-22849 Sgt FRANCIS, V R (RCE) of 42 Coy on the strength of 10 CBR Bn, having been duly sworn states:

I am L-22849 Sgt Francis, V R (RCE) of 42 Coy on the strength of 10 CBR Bn. At approx the hour of 0130 the 5 Jan 45, on infm I received, I investigated in the barracks and found Pte Haggarty, whom I now recognize, missing. I informed the BOS (Sgt Morrison), and we investigated further around the barracks, and we investigateed in regard to the truck and found the Legion vehicle, No CL-4269003 (Ford) 60 cwt missing. We informed the Orderly Officer and informed the Guard at the gate, who informed us that the Legion vehicle and three men had already passed through the gate.

Q. What was the infm received?
A. That three men with a vehicle and blankets had departed from the barracks.

RP 83(b) complied with)

"V R Francis"
(V R Francis) Sgt L-22849

Accused declinec to cross examine the witness.

SECOND WITNESS
Prosecution

K-40916 Sgt MORRISON, G A. of HQ Coy on the strength of 10 CBR Bn having been duly sworn states:

I am K-40916 Sgt Morrison, G A of HQ Coy on the strenght of 10 CBR Bn. I was BOS from Reveille the 4 to Reveille the 5 Jan 45. At approx 0145 hrs 5 Jan 45, Sgt Francis brought to my attention that the accused, whom I now recognize, was absent from barracks. On checking 42 Coy rooms with Sgt Francis, we found the accused was absent.

Cross examination of the witness by the accused.
Q. Did you find me absent from the barracks or from my quarters?
A. I found you absent from your quarters.

RP 83(b) complied with.

"G A Morrison"
(G A Morrison) Sgt K-40916

THIRD WITNESS
Prosecution

K-4116 Pte MORELLI, J(RaRegt C) of 49 Coy, on the strength of 10 CBR Bn, having been duly sworn states:

I am K-4116 Pte Morelli J (R Regt C) of 49 Coy, on the strength of 10 CBR Bn. At 0130 hrs 5 Jan 45 I was on duty at the main gate as RP when the Legion truck came to the gate with two Cpls in front. It was when I happened to look in the back of the truck, when I saw the accused, whom I now recognize, riding in the rear of the truck.

Cross examination of the witness by the accused.

Q. Would you state the exact part of the truck you looked in; whether it was over the back or through the holes in the tail gate?
A. I looked in the holes of the tail gate and from there I could see the rear half of the truck and I saw some blankets and you were lying on the blankets.

Q. Did you actually see my face?
A. Not until you got out of the truck.

...../2

THIRD WITNESS
Prosecution
(Cont'd)

Q. Did you see me get out of the truck?
A. Yes

Q. How long as the truck in the archway?
A. I'd say about ten minutes.

Q. Could it have been possible for someone in the back of the truck to have gotten back into barracks, while the truck was in the arch-way?
A. Yes.

RP 83(b) complied with.

"J Morelli"
(J Morelli) Pte K-4116

FOURTH WITNESS
Prosecution

C-122549 Pte GROSE, G F (CIC) of 48 Coy, on the strength of 10 CBR Bn having been duly sworn states:

I am C-122549 Pte Grose, G F (CIC) of 48 Coy, on the strenght of 10 CBR Bn. Between the hours and 0130 hrs the morning of Jan 5, 1945, on return from 10 Bn kitchen, I was ordered by the orderly Officer of the day to arrest occupants of the Cdn Legion truck, in charge of Cpl Farrance. At 0330 hrs of Jan 5, 1945 on return of this vehicle I placed the three occupants under close arrest as ordered. The three occupants, of which Pte Haggarty, whom I now recognize, was one man escorted by me to the Guard Room.

Q. On return of the Legion truck did you see any balnkets in the rear?
A. On ins ection nonw were found.

RP 83(b) complied with.

"G F Grose"
(G F Grose) Pte C-122549

Accused declines to cross examine the witness.

FIFTH WITNESS
Prosecution

B-46477 CQMS RICHARDSON R H (A&S Highrs) of 42 Coy, on the strength of 10 CBR Bn. Between the hours of 2230 hrs 4 Jan 45 and 0630 hrs 5 Jan 45 approx 25 blankets were stolen from my store room by means of a ventilator near which the blankets were piled. Steps have been taken to ensure no further loss by this ventilator shall occur.

RP 83(b) complied with.

" R H Richardson"
(R H Richardson) CQMS B-46477

SIXTH WITNESS
Prosecution

C-118595 Pte McPHAIL, W J (R Regt C) of 48 Coy, on the strenght of 10 CBR Bn having been duly sworn states:

I am C-118595 Pte McPahil, W J (R Regt C) of 48 Coy, on the strength of 10 CBR Bn. I was guard at the front gate from midnight 4/5 Jan 45 as Regt'l Guard. At approx 0115 hrs 5 Jan 45 I heard a truck try to start and when it came to the gate I called the RP. He O Kayed the truck and we opened the gate. While trying to get the truck started one Cpl got out of the cab; a pte got out of the back, leaving a red-headed Cpl in the cab; The accused, whom I now recognize was the Pte. The accused came around to the front of the truck, to help to start it. The accused went out with the truck and did not return during my tour of duty.

Cross examination by the accused.

Q. Did you recognize when I was helping with the truck or getting out of the back?
A. I recognized you the second time as the man who got out of the back.

RP 83(b) complied with. (W J McPHAILP Pte C-118595

SEVENTH WITNESS
Prosecution

D-126481 Cpl WHITAKER, J (RCASC) of 14 CLWS attached to 10 CBR Bn having been duly sworn states:

I am D-126481 Cpl Whitaker J (RCASC) of 14 CLWS attached to 10 CBR Bn. At approx 2230 hrs 4 Jan 45 I parked my truck and immobilized it in front of 10 CBR Bn Orderly Room. At approx 0230 hrs 5 Jan 45 the Orderly Sgt and RP Sgt woke me up and asked me the number of my Aux Service truck or any identifiaation in markings of same. They went to identify the truck and came back 10 minutes later and told me my truck was missing. My truck is a Ford 60 cwt No CL - 4268003. I am in complete charge of same and did not authorize anyone to drive same thatnight. There no blankets in my turck when I parked i at 2203 hrs 4 Jan 45. Next morning I found my veh at 0800 hrs 5 Jan 45. I examined it and found nothing missing and there were no blankets in the back.

RP 83(b) complied with.

"J Whitaker"
(J Whitaker) Cpl D-126481

The accused declines to cross examine the witness.

The accused having been cautioned as follows: "Do you wish to make a statement or gi e any evidence on oath? You are not obliged to say anything or to give any evidence unless you wish to do so, but whatever you may say or any evidence you may gi e, will be taken down in writing and may be used in evidence", declines to give any evidence and reserves his defence.

I certify that the foregoing summary of evidence consisting of three(3) pages was taken down in writing by me, in the presence and hearing of the accused.

I certify that RP 4 (c) (d) (e) and (f) have been complied with.

"J F Juby"
(J F Juby) Lt
CH of O - 10 CBR Bn
Officer detailed to take
Summary of Evidence.

SCHEDULE.

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

Accused : C-80238 Cpl Granville WILSON, CH of O, 10 CBR Bn

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

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

At present under sentence for N/A beginning on (date) N/A (1)

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

Time in confinement awaiting present trial—a total of 40 days, of which NIL days were spent in hospital.(1)

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

Sentence Awarded by the Court :

TO BE REDUCED TO THE RANKS AND TO UNDERGO DETENTION FOR EIGHTEEN (18) MONTHS

(Sgd) N/A — Judge-Advocate, if any.

15 Feb 45 — Date awarded.

(Sgd) "Donald Mackenzie" — President. (RP 45, 50.) Major

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

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

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

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

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

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

CONFIRMED AND TO BE PROMULGATED ON A BN PARADE.

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

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

(Sgd) "G S N Gostling"

Date 17 Feb 45

Commanding (G S N Gostling) Brigadier 2 CDN BASE RET GP

Confirming Officer.

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

Accused.	Date.	Signature of Offr.
C-80238 Cpl Granville WILSON CH of O, 10 CBR Bn	1330 hrs 20 Feb 45 on 10 CBR Bn parade	"Jas W Varty" Lt Ass Adjt 10 CBR Bn

ALL DELETIONS AND ALTERATIONS WILL BE INITIALLED.

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

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

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

D3. The evidence for the Prosecution is taken.(1)
(1. RP 37(C), 115, KR Can 555. Record evidence per Notes. As to Prosecutor giving evidence himself see RP 39(D) (E).)

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

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

President to accused: Do you wish to give evidence yourself as a witness, make a statement, or do neither ? Do you intend to call witnesses on your behalf ?
Ans.....
Ans..... Are they witnesses as to character only ? Ans.....
(1. RP 115. 2. RP 40(A), see 80(D). 3. RP 40 fn 10. 4. RP 40 fns 2, 9.)

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

D7. The Court is closed to consider the finding(s).(1) The finding(s) of the Court is (are) recorded in Part I of the Schedule.(2) The Court is re-opened.
(1. RP 43, 117(A). See Notes in Part I of Schedule. 2. RP 54(A).)

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

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

RECORD FORM E—PROCEEDINGS ON CONVICTION BEFORE SENTENCE.

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

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

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

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

E5. The Court considers the sentence.(1) The President records the sentence in Part I of the Schedule, which is dated and signed by him and the JA, if any.(2)
(1. When several accused tried separately see RP 71 (D). One sentence only, comprised of the punishment or punishments laid down in AA 41, 44 and its proviso, is to be awarded to cover all charges in all charge sheets on which accused found guilty. RP 48. As to sentences see AA 44, 138, 182. RP 46-50, 69, 118, 119(A). KR Can 308, 330, 563-566. Overseas RO 309, 2323. MML p 60, 757-759. As to sentences assigned for civil offences by the law of England see AA 41(5). MML p 120. When accused already under sentence of imprisonment or detention see AA 44(18), 60(1). KR Can 564. 2. RP 50. As to release from arrest by Confirming Offr see KR Can 567. As to assembly and disposal of record after trial see instrs on back of Convening Order.)

PRESIDENT OR JA WILL INITIAL ALL DELETIONS AND ALTERATIONS.

SCHEDULE.

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

Accused: A-32435 Pte Harold HAGGERTY, CH of O, 10 CBR Bn

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

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

At present under sentence for N/A beginning on (date) N/A (1)

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

Time in confinement awaiting present trial—a total of 40 days, of which NIL days were spent in hospital.(1)

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

Sentence Awarded by the Court:

TO UNDERGO DETENTION FOR ONE(1) YEAR

(Sgd) N/A — Judge-Advocate, if any.

15 Feb 45 — Date awarded.

(Sgd) "Donald Mackenzie" — President. (RP 45, 50.) Jor

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

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

~~Date~~ (Sgd) ~~Commanding~~

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

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

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

CONFIRMED AND TO BE PROMULGATED ON A BN PARADE

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

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

Date 17 Feb 45

(Sgd) "G S H Gostling"

Commanding (G S H Gostling) Brigadier
2 CDN BASE REPL GP

Confirming Officer.

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

Accused.	Date.	Signature of Offr.
A-32435 Pte Harold HAGGERTY CH of O, 10 CBR Bn	1330 hrs 20 Feb 45 on 10 CBR Bn parade	"Jas W Varty" Lt Ass Adjt 10 CBR Bn

ALL DELETIONS AND ALTERATIONS WILL BE INITIALLED.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

RECORD FORM E—PROCEEDINGS ON CONVICTION BEFORE SENTENCE.

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

Ans.....

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

E2. The Prosecutor produces Statement(s) as to Character and Particulars of Service(1), and certified true copy (copies) of Conduct Sheet(s)(2), purporting to refer to the accused, which he submits to the Defending Offr for examination, and then to the Court for admission in evidence. The Court is satisfied that these documents refer to the accused, because (i) they purport to be signed in the manner required by AA 103(1) (g) (h), and (ii) they purport to refer to (a) soldier(s) having the same number, rank, name and corps as the accused. Admitted in evidence and marked Ex.....and Ex.....respectively.(3)

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

E3. President to accused: Do you wish to address the Court on the Statement(s) and Conduct Sheet(s), and in mitigation of punishment?(1) Ans.....(2)

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

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

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

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

(1. When several accused tried separately see RP 71 (D). One sentence only, comprised of the punishment or punishments laid down in AA 41, 44 and its proviso, is to be awarded to cover all charges in all charge sheets on which accused found guilty. RP 48. As to sentences see AA 44, 138, 182, RP 46-50, 69, 118, 119(A), KR Can 308, 330, 563-566, Overseas RO 309, 2322, MML p 60, 757-759. As to sentences assigned for civil offences by the law of England see AA 41(5), MML p 130. When accused already under sentence of imprisonment or detention see AA 44(18), 68(1), KR Can 564. 2. RP 50. As to release from arrest by Confirming Offr see KR Can 567. As to assembly and disposal of record after trial see insets on back of Convening Order.)

PRESIDENT OR JA WILL INITIAL ALL DELETIONS AND ALTERATIONS.

H.Q.C. 55-F-856 CONFIDENTIAL

DEPARTMENT OF NATIONAL DEFENCE—OTTAWA, CANADA

SUBJECT

FIELD GENERAL COURT-MARTIAL [illegible]589

FAIRBORN, WILLIAM GEORGE B-[illegible]R.

CENTRAL REGISTRY	DATE	R.A. OR C.P.	INITIALS	REFERRED TO	FOR	INITIALS	DATE
				(If persons for whom referred cannot be conveyed on one line, write here "With Middle")			
							2-12-46

CONFIDENTIAL H.Q.C. 55-F-856

OVERSEAS COMBINED

Correspondence to be PINNED here.

Army Form A.3.

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

PROCEEDINGS.

A. Order convening the Court.

On Active Service, this third day of August, 19 41.

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

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

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

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

* Omit if not applicable.

~~I am unable to appoint~~ ??
~~(Three Officers to form the Court)~~ ??
~~A Field Officer as President)~~ ??
~~for the following reasons, namely:—]~~ ??

I hereby appoint Lieut. A.M. MacPherson, H.Q., Canadian Corps, as Judge-Advocate.

Proceedings Assembly Sept 1/8/41
Lt Col Commanding Officer
Judge Advocate

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

President.

Rank.	Name.	Regiment.
Major	J. Begg	14 Cdn. Army Tank Bn., (The Calgary Regiment)

Members.

Rank.	Name.	Regiment.
Captain	D.H. Woodside,	14 Cdn. Army Tank Bn. (The Calgary Regiment)
Captain	H.". Gauthier	11 Cdn. Army Tank Bn. (Ontario Regiment)

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

*Signed YY Lord Gt Brigadier

Commanding 1 Cdn. Army Tank Bde.

Convening Officer.

SCHEDULE.

Number, Rank (*a*), Name and Unit of Accused (*b*)	Offence charged	*Plea	Finding, and if Convicted, Sentence (*c*)	How dealt with by Confirming Officer (*d*)
B.60939, Tpr. Barton, Larry Allan. 12 Cdn. Army Tank Bn. (Three Rivers Regt.)	(1) When on Active Service attempting to desert from His Majesty's Service. (Sec. 12(1)(a) AA)	Not Guilty	Not guilty of attempting to desert, but guilty AWL 2 days absent	
	(2) When in lawful custody attempting to escape. (Sec. 22 A. A.)	Guilty	Guilty	
	(3) Resisting an escort whose duty it was to have him in charge. (Sec.26 A.A.)	Guilty	Guilty	
	(4) Conduct to the prejudice of good order and military discipline. (Sec.40 A.A.)	Not Guilty	Not Guilty Sentenced to undergo detention for a period of nineth (90) days (5 Aug 41) (Initialled) "N.A. macP"	
B.60967, Tpr. Fairborn, A.9 CAC (A) TC, Camp Borden, Ont.	(1) Absenting himself without leave. (Sec. 15(1)A.A.)	Guilty	Guilty	
	(2) Being in some place away from his unit. (Sec. 40 A.A.)	Not Guilty	Not Guilty Sentenced to undergo 14 days detention 6 Aug. 41 (initialled) "J. B."	

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

(Signed) "F.F.Worthington" Brigadier, (Signed) "J Bell" (signed) Major,
Commanding 1 Cdn. Army Tank Bde. 11 Cdn. Army Tank Bn. *President.*
Convening Officer (*c*) (signed) "N.A. MacPherson," Lieut. Judge Advocate.

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

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

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

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

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

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

B. Certificate of President as to proceedings.

I certify that the above Court assembled on the 5th day of August 1941, and duly tried the persons named in the Schedule, and that the plea, finding, and sentence in the case of each such person were as stated in the third and fourth columns of that Schedule.

I also certify that :—

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

were duly sworn.

* Om't if not applicable.

Signed this 6th day of 1941.

(Signed) "J. Begg"
President of the Court Martial.

C. Certificate in case of death sentences.

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

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

Signed this day of 19 .

N.A. (initialled) "J.B."
President of the Court Martial.

D. Confirmation.

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

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

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

Signed this day of 19 .

(signed) "F.F. Worthington" (Brigadier)
Confirming Officer.

Promulgated and extracts taken in the case of Tpr. Fairborn B60967

(*a*) (Dated) Aug. 25, 1941 (Signed) "J.F.F. Orr Capn" Hdq 11 CATB O.R.

Promulgated and extracts taken in the case of

(Dated) (Signed)

Promulgated and extracts taken in the case of

(Dated) (Signed)

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

[84] Wt 38001/1[8 20m 1-41 W. & Co., Ltd. Gp. 749.]

CHARGE SHEET

The Accused, No.B60967 Tpr. Fairborn, W.G., A-9 C.A.C.(A)T.C.Camp Borden, Ontario, presently attached to the 11th Cdn. Army Tank Bn.(Ont.Regt.) C.A.(O), for Discipline, Rations and Quarters, supernumerary to War Establishment, is charged with:-

No. 1 CHARGE SECTION 15(1) ARMY ACT

ABSENTING HIMSELF WITHOUT LEAVE,

In that he,

after 18th June, 1941 absented himself without leave from No. A-9 C.A.C.(A).T.C., Camp Borden, Ontario and surrendered himself to the 11th Cdn. Army Tank Bn.(Ont. Regt.) C.A.(O) in the Field at 2000 hrs, 31st Jul.1941.

No.2 CHARGE SECTION 40 ARMY ACT

CONDUCT TO THE PREJUDICE OF GOOD ORDER AND MILITARY DISCIPLINE

In that he,

on 31 Jul.1941, was in some place away from his unit on a particular date, when his duty required him to be with his unit.

Field, England,
1st August, 1941.

Superintendent Cecil

.....for..MAJOR
J.H. Perry,
A/O.C., 11th Cdn. Army Tank Bn.(Ont.Regt.)

To be tried by Field General Court Martial.

F.F. Worthington

(F.F. Worthington)
Brigadier,
Comd., 1 Cdn. Army Tank Bde.

Capt Major

Proceedings in a FIELD GENERAL COURT MARTIAL held in the FIELD on WEDNESDAY 6 AUGUST 1941
In the case of No.B.60967 Tpr FAIRBORN, W.G.
Attached to 11 Cdn Army Tk Bn - Ontario Regt C.A.(O)

President: Major J. Begg 14 Cdn.A.Tank. Bn.

Member: Capt D.H. Woodside 14 Cdn.A.Tank, Bn.

Member: Capt H.W. Gauthier 11 Cdn.A.Tank. Bn.

Prosecuting Officer: Capt W.J.A.Wallace, 12 Cdn.Army Tank Bn.

Defending Officer: Capt A.G.Phelan 12 Cdn.Army Tank Bn.

The Convening Order, Charge Sheet and Summary of Evidence are laid before the Court.

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

The Accused is brought before the Court.
Medical certificate submitted by prosecutor
The Convening Order is read by the President.

Q.1. Do you object to be tried by me as President or by any of the Officers whose names you have heard read?

A.1. No Sir.

The President, Members and Officers under Instruction are then duly sworn.

The Accused is arraigned on the charges in the Charge Sheet.

Q.2. Are you Guilty or Not Guilty of the First charge against you which you have heard read?

A.2. Guilty Sir.

R.P. 35(B) is then complied with in connection with the First charge.

The Summary of Evidence is read and the Court determines that it is prepared to accept the plea of Guilty.

President: In compliance with R.P. 37(A) the Court directs a plea and finding of Not Guilty on the Second (Alternative) charge.

Prosecutor: This Accused came overseas on his own volition. His papers have not yet arrived and therefore it is impossible to present to the Court any satisfactory statement as to this soldier's record and character.

The Defending Officer then put in a written speech in mitigation of punishment.

This is signed by the President and attached to the Proceedings.

The Court closes for consideration of sentence.

SUMMARY OF EVIDENCE

THE 11TH CDN. ARMY TANK BN. (ONT. R.)

FIELD, ENGLAND

AUGUST 1ST, 1941

Summary of Evidence in the Case of No. B60967 Tpr. William George Fairborn, A-9 C.A.C.(A).T.C., Camp Borden, Ontario and presently attached to The 11th Cdn. Army Tank Bn. (Ont. R.) C.A.(O). for Discipline, Rations and Quarters, Field, England, a soldier of the Active Militia of Canada, placed on Active Service, who is charged with:

1. Army Act, Section 15(1) - When on Active Service, Absenting himself without leave, in that he, after 18th June, 1941, absented himself without leave from No. A-9 C.A.C.(A).T.C., Camp Borden, Ontario, and surrendered himself to The 11th Cdn. Army Tank Bn. (Ont. R.) C.A.(O). in the Field at 2000 hrs., 31st July, 1941.

2. Army Act, Section 40 - When on Active Service, Being in some place away from his Unit on 31st July, 1941, when his duty required him to be with his Unit.

I carefully explained the Accused rights to him in the matter of this Summary of Evidence.

The Accused requests that all Evidence be taken on Oath.

1ST WITNESS

B60763 A/Cpl. McCutcheon T.W., "A" Squadron, The 11th Cdn. Army Tank Bn. (Ont. R.) C.A.(O)., having been duly sworn, states:

"At 2130 hrs. on 31st July, 1941 I was Acting Squadron Orderly Sergeant. I met Tpr. Fairborn, whom I recognised as a former member of The 11th Cdn. Army Tank Bn. (Ont. R.), and whom I last saw on or about June 18th, 1941 at Camp Borden, Ontario. Tpr. Fairborn voluntarily placed himself in my charge and he was sober. I asked him how he got over and he said that he did not want to make any statements. I took him to "A" Squadron Orderly Room where he was interviewed by Major Schell. I was instructed to take Tpr. Fairborn to the kitchen and get him something to eat and find a bed for the night for him.

"Tpr. Fairborn was at no time placed under arrest."

T.W. McCutcheon .....A/CORPORAL

B60763 (T.W. McCutcheon) THE 11TH CDN. ARMY TANK BN. (ONT. R.)

The Accused declines to cross examine the witness.

SUMMARY OF EVIDENCE

THE 11TH CDN. ARMY TANK BN. (ONT. R.)

FIELD, ENGLAND

AUGUST 1ST, 1941

2ND WITNESS

Major H.R. Schell, O.C. "A" Squadron, The 11th Cdn. Army Tank Bn. (Ont. R.) C.A.(O)., having been duly sworn, states:

"On 31st July, 1941, at or about 2230 hrs. I went to "A" Squadron Orderly Room Tent and in there I saw the Accused, Tpr. Fairborn, whom I recognised as being a former member of "A" Squadron of The 11th Cdn. Army Tank Bn. (Ont. R.). I said: "Well Fairborn, what are you doing here?" He replied in effect that he had come to join his Unit. My reply to this statement was that he no longer belonged to The 11th Cdn. Army Tank Bn. (Ont. R.)."

H.R. Schell .....MAJOR
(H.R. Schell) THE 11TH CDN. ARMY TANK BN. (ONT. R.)

The Accused declines to cross examine the witness.

3RD WITNESS

A55057 A/Sgt. Baillargeon F.A., HQ. Squadron, The 11th Cdn. Army Tank Bn. (Ont. R.) C.A.(O)., having been duly sworn, states:

"I, A/Sgt. Baillargeon, on the 6th day of June, 1941, was Acting Orderly Room Sergeant of The 11th Cdn. Army Tank Bn. (Ont. R.) at Camp Borden, Ontario when the Accused was struck off the strength of the said Unit on reposting to A-9 C.A.C.(A).T.C. and attached to A-8 C.A.C.(A).T.C. for all purposes, effective 4th June, 1941, and entry of the same appearing in Unit Part 2 Order No. 105, dated 6th June, 1941."

F.A. Baillargeon .....A/SERGEANT
A55057 (F.A. Baillargeon) THE 11TH CDN. ARMY TANK BN. (ONT. R.)

The Accused declines to cross examine the witness.

B60967 Tpr. Fairborn W.G., the Accused, after having been cautioned again in accordance with R.P. 4 E. and having been duly sworn, states:

"I, William George Fairborn, B60967, transferred from The 11th Cdn. Army Tank Bn. (Ont. R.) to A-9 C.A.C. (A).T.C., on attachment to A-8 C.A.C.(A).T.C. at Camp Borden, Ontario, left for Halifax on or about the 9th of June, 1941, without a Pass, in the full knowledge that I was committing a misdemeanor, but as I had been of The 11th Cdn. Army Tank Bn. (Ont. R.) for twenty-two months, and had received Embarkation Leave, and had expected to proceed Overseas with the Unit, I was very

SUMMARY OF EVIDENCE

THE 11TH CDN. ARMY TANK BN. (ONT. R.)

FIELD, ENGLAND

AUGUST 1ST, 1941

B60967 Tpr. Fairborn's statement continued:

disappointed at being reposted to The Training Centre and was extremely anxious to get over with my Unit and get into action. My original idea, on getting into the Army was to fight for my Country, and I felt that the best place to do that was with my Unit when it went into action. Because of these reasons I took it upon myself to make my own way to England without proper authority and without expense to the Public.

"Immediately upon arrival in England I made every effort to locate the Unit, and upon locating its whereabouts I proceeded there immediately and placed myself in the charge of the Acting Orderly Sergeant.

"I make this statement voluntarily and declare that I was not in any way forced to make these statements, and I wish to throw myself on the mercy of the Court."

W.G. Fairborn .....TROOPER
B60967 (W.G. Fairborn) A-9 C.A.C.(A).T.C.

The Accused declined to call any witnesses on his own behalf.

Taken before me in The 11th Cdn. Army Tank Bn. (Ont. R.) C.A.(O). Orderly Room at Field, England, this 1st day of August, 1941.

J.T.F. Orr .....CAPTAIN & ADJ.
(J.T.F. Orr) THE 11TH CDN. ARMY TANK BN.
(ONT. R.)

LIST OF WITNESSES FOR THE PROSECUTION

Major H.R. Schell
"A" Squadron
The 11th Cdn. Army Tank Bn. (Ont. R.) C.A.(O).
Field, England.

A55057 A/Sgt. Baillargeon F.A.
Headquarters Squadron
The 11th Cdn. Army Tank Bn. (Ont. R.) C.A.(O).
Field, England.

B60763 A/Cpl. McCutcheon T.W.
"A" Squadron
The 11th Cdn. Army Tank Bn. (Ont. R.) C.A.(O).
Field, England.

LIST OF WITNESSES FOR THE DEFENCE

NIL.

THE 11TH CDN. ARMY TANK BN. (ONT. R.)
FIELD, ENGLAND

1st August, 1941.

I, B60967 Tpr. William George Fairborn, wish to have an Officer assigned to defend me in my Trial by Court Martial.

W.G. Fairborn ..... TROOPER
B60967 (W.G. Fairborn) A-9 C.A.C.(A).
T.C.

Statement of Capt Graham A.G.

As far as the evidence is concerned the only thing to support the present court is the accused's plea of guilty. There is no evidence whatever to show that the accused is absent without leave. But that in order to save the court time, expense & trouble the accused has pleaded guilty.

Obviously the accused did commit an offence. On his own admission he absented himself from his unit - the training centre. As a rule absence without leave can be laid down to two motives one, that the absentee is fed up or wants a holiday; the other that he is attempting to leave the army. In this case the accused's motives were first a feeling of loyalty or affection for his original unit, and secondly, having been attached to a training center, the ~~participant~~ accomplishment carrying out of his original motives of enlisting in ~~accordance~~ getting away from a home & job and becoming re-attached to a combatant unit.

Under these circumstances it is my opinion that the prisoner should be censured for his actions but at the same time should be complimented for the motives behind them, and I ask that the court in deciding upon a fitting sentence, take the motive as well as the offence into consideration and consequently be as lenient as possible.

Statement for defence
B60967 Spr Fairbairn
J Begg Major
President

CRIME.

"A"

SQUADRON, BATTERY OR COMPANY.

CHARGE against No. B60967 Tpr. Fairborn W.G.

Place.	Date of Offence.	OFFENCE.	Name of Witness.	Punishment Awarded.	By whom Awarded.
Field		The Accused, No. B60967 Tpr. Fairborn W.G., A-9 C.A.C.(A). T.C., presently attached to The 11th Cdn. Army Tank Bn. (Ont. R.), C.A.(O). for Discipline, Rations and Quarters, supernumerary to War Establishment, is charged with: 1. Section 15, (1) A.A. Absenting himself without leave, in that he after 18th June, 41 absented himself without leave from No. A-9 C.A.C.(A).T.C., Camp Borden, Ontario and surrendered himself to The 11th Cdn. Army Tank Bn. (Ont. R.) C.A.(O). in the Field at 2000 hrs., 31st July, 1941.		Remanded to C.O. at 2020 hrs. 1 Aug 41	Lt. H. Bell Major.

Remanded for a Field General Court Martial and a Summary of evidence be Taken

J. M. Preston Major

at 20.20 hrs. Aug 1-1941

Service years

Number of good conduct badges

Date of last entry in company conduct book

Character

Date of last entry for an act of drunkenness

Number of cases of drunkenness within the last 12 months

Commanding.

M. F. B. 264.

Forms—7-18.

H. Q. 1172-22-41

CRIME

"A"

SQUADRON, BATTERY OR COMPANY

CHARGE against No. B60967 Tpr. Fairborn W.G.

Place	Date of Offence	OFFENCE	Name of Witness	Punishment Awarded	By whom Awarded
Field		2. Section 40, A.A. Being in some place away from his Unit on 31st July, 1941 when his duty required him to be with his Unit.	B60763 A/Cpl. McCutcheon	Remanded for D.C.M. 20 hrs. 1 Aug 41	A.R. Bell Maj

Remanded for a Field General Court Martial and a Summary of evidence be taken

[illegible] 20 hrs. Aug 1 1941

Service years

Number of good conduct badges

Date of last entry in company conduct book

Character

Date of last entry for an act of drunkenness

Number of cases of drunkenness within the last 12 months

Commanding

M. F. B. 264
45M—11-40 (8982-56)
H. Q. 1772—39—40

SCHEDULE "A"

THE 11TH ARMY TANK BATTALION
(ONT. R.)
1 CAN. ARMY TANK BRIGADE

ORDERS BY
MAJOR J.S.GOW

ORDER NO. 105
SHEETS: 4 (SHEET NO. 1).
PART II

CAMP BORDEN
DATED 6TH JUNE 41

1. LAST ORDER ISSUED No. 104 dated 5th June, 1941.

2. STRENGTH DECREASE - DISCHARGE

(a) B60539 L/Cpl. Rose A.T. "C" Struck off the strength of the Unit on Discharge, effective 6-6-41.
(Auth. R.O. 1029, Para. 10, Physically Unfit for Military Service under existing standards, HQ. A.D.M.S. 1/C.A.D. dated 5-6-41).

3. CLOTHING ALLOWANCE - ON DISCHARGE

(a) B60539 L/Cpl. Rose A.T. "C" Having been struck off the strength of the Unit on Discharge, effective 6-6-41 and having been enlisted on 3-9-39 and having completed six (6) months continuous service is hereby granted the sum of Thirty-Five ($35.00) Dollars Clothing Allowance to be paid through the Paylist of the Unit as authorized under Article 187 F.R.&I. (as amended).

4. REHABILITATION GRANT

(a) B60539 L/Cpl. Rose A.T. "C" Entitled to receive Rehabilitation Grant as authorized by Routine Order No. 872 of 1941.
Date of Enlistment - 3rd September, 1939.
Date of Discharge - 6th June, 1941.
Reason for Discharge - Routine Order No. 1029, Para. 10. Physically Unfit for Military Service under existing standards.
(To be paid through the Paylist of the Unit as authorized under R.O. 872 of 1941).

5. STRENGTH DECREASE - RE-POSTING

(a) The undermentioned personnel are struck off the strength of the 11th Army Tank Bn. (Ont. R.) on re-posting to A-9C.A.C.(A).T.C. and attached to A-8C.A.C.(A).T.C. for all purposes, effective 4-6-41.
(Auth. HQ. 54-27-3-50 A.P. dated 4th June, 1941).

B60513 R.Q.M.S. Borrowdale W.	HQ.	D74588 Tpr. Christie J.J.	"A"
B60593 M.Q.M.S. Smart J.	HQ.	B61064 Tpr. Powell W.	"A"
B60317 S/Sgt. Matthews D.E.G.	HQ.	B74276 Tpr. Mark J.C.	"A"
B61087 S/Sgt. Matthews D.T.	HQ.	B60565 S.Q.M.S. Brown G.L.	"B"
B60583 Cpl. McGahey S.D.B.	HQ.	B60783 L/Cpl. Burdett C.E.	"B"
B61108 Tpr. Daley W.E.	HQ.	A359 Tpr. Ross G.E.	"B"
B60977 Tpr. Harris P.K.	HQ.	B60687 Tpr. Clark W.H.	"B"
B60509 Sgt. Hanlyn C.D.	"A"	B60620 Tpr. Hale L.	"B"
B60886 Tpr. Harvie J.R.	"A"	B60536 Tpr. Cherry W.G.	"B"
B60933 Tpr. Wright F.	"A"	B74601 Tpr. Holmes C.H.	"B"
B60930 Tpr. Watt R.E.	"A"	B95131 Tpr. Sinstead W.E.	"D"
B61019 Tpr. Porter F.	"A"	B60753 Tpr. Downes W.	"D"
B60597 Tpr. Greenwood J.	"A"	B60952 Tpr. Cloran J.J.	"D"
B60967 Tpr. Fairborn W.G.	"A"	A55054 Tpr. Marshall J.	"C"
B60877 Tpr. Ellis W.C.	"A"	B19030 Tpr. Sutherland L.G.	"C"
B60765 Tpr. Owles E.A.	"A"	A55072 Tpr. Findlay H.J.	"C"
B60685 Tpr. Callaghan H.	"A"	B11455 Tpr. Tong J.A.	"C"
B61213 Tpr. McBride E.R.	"C"		

(b) B4431 A/Sgt. Newton G. HQ. struck off the strength of the 11th Army Tank Bn. (Ont. R.) on re-posting to A-8C.A.C.(A).T.C. for all purposes, effective 4-6-41.
(Auth. HQ. 1/C.A.D. 6-2-0-0 dated 3rd June, 1941).

6. STRENGTH INCREASE - POSTING

(a) The undermentioned personnel are taken on the strength of the 11th Army Tank Bn. (Ont. R.) on posting from HQ. Sqn. 1/Can. Armoured Brigade and posted to HQ. Sqn., effective 7-6-41.
(Auth. H.A.C./S 11-6-9-3 dated 6th June, 1941).

B61159 Tpr. Spadafore R.A. B61095 Tpr. Barrett C.A.

THE 11TH ARMY TANK BATTALION
(ONT. R.)
1 CAN. ARMY TANK BRIGADE

ORDERS BY
MAJOR J.S. GOW

ORDER NO. 105 PART II CAMP BORDEN
SHEETS: 4 (SHEET NO. 2) DATED 6TH JUNE 41

7. STRENGTH INCREASE - TRANSFER

(a) The undermentioned personnel are taken on the strength of the 11th Army Tank Bn. (Ont. R.) on transfer from the 48th Highlanders of Canada Regimental Wing No. 2 District Depot and posted to HQ. Sqn., effective 5-6-41.
(Auth. HQ. 54-27-12-3 Ord. M.R. dated 6th May, 1941).
B74242 Tpr. Waterfield E. B74748 Tpr. Richardson D.

(b) The undermentioned personnel (attached to the Unit) are taken on the strength of the 11th Army Tank Bn. (Ont. R.), effective 5-6-41.
(Auth. HQ. 54-27-12-3 Ord. M.R. dated 6th May, 1941).
B74537 Tpr. Mackie J.F. B74396 Tpr. Kearns G.F.

(c) B74884 Tpr. Martyn C.C.H. is taken on the strength of the 11th Army Tank Bn. (Ont. R.) on transfer from 48th Highlanders of Canada Regimental Wing No. 2 District Depot and posted to HQ. Sqn., effective 5-6-41.
(Auth. D.A.A.G. C.B. HQ. 1-101-9 Vol. 2 dated 3rd June, 1941).

(d) B38196 Tpr. Lewis F. is taken on the strength of the 11th Army Tank Bn. (Ont. R.) on transfer from R.H.L.I. Regimental Wing No. 2 Dist. Depot and posted to HQ. Sqn., effective 5-6-41.
(Auth. D.A.A.G. C.B. HQ. 1-101-9 Vol. 2 dated 3rd June, 1941).

(e) A99235 Tpr. Povinsky P.J. is taken on the strength of the 11th Army Tank Bn. (Ont. R.) on transfer from No. 1 Det. R.C.A.S.C. and posted to HQ. Sqn., effective 7-6-41.
(Auth. H Q. 405-P-3062 (A.P.3) dated 29th May, 1941).

8. QUALIFICATIONS (For Record Purposes Only)

(a) The undermentioned personnel having attended Courses of Instruction at A-8C.A.C.(A).T.C. obtained qualification in the subjects and from the dates shown below:

REGTL. NO.	RANK	NAME	SQN.	SUBJECT	GROUP	DATE
	Lieut.	L.I. Knowles	"B"	Instr. Gunnery		2-11-40.
	Lieut.	N.B. Daylay	"C"	Instr. Gunnery		2-11-40.
B60969	Cpl.	Forbes J.M.	"C"	Instr. Gunnery		2-11-40.
B61009	Cpl.	McQuay A.J.	"B"	Instr. Gunnery		2-11-40.
B61079	Sgt.	Brown J.D.	HQ.	Instr. Gunnery		2-11-40.
B61001	Sgt.	Mawson E.S.	"D"	Instr. D. & M.		16-11-40.
B60587	A/T.Q.M.S.	Holman R.H.	HQ.	Instr. D. & M.		16-11-40.
B61071	Sgt.	Reardon A.S.	"A"	Instr. D. & M.		16-11-40.
	Capt.	A.O. Jackson	HQ.	Instr. D. & M.		16-11-40.
	Capt.	G.T.R. FitzSimon	"C"	Instr. D. & M.		30-11-40.
	Lieut.	A.R. McCurdy	"C"	Instr. Gunnery		30-11-40.
B60529	L/Cpl.	Pogson L.J.	"A"	Instr. Gunnery		30-11-40.
B60679	L/Cpl.	McKnight L.R.	"A"	Instr. Gunnery		23-12-40.
	Capt.	Gauthier H.W.	HQ.	Instr. Gunnery		23-12-40.
B60759	Sgt.	McIvor J.	"C"	Instr. Gunnery		23-12-40.
B60911	Cpl.	Renardson H.S.	"D"	Instr. Gunnery		23-12-40.
B60737	L/Cpl.	Clarke R.G.	"C"	Instr. Gunnery		15-2-41.
B60557	Cpl.	Hood J.H.	"C"	Gunnery		15-2-41.
B60772	Tpr.	Frost R.G.	"C"	Gunnery		15-2-41.
B60946	L/Cpl.	Boyle J.	"B"	Gunnery		15-2-41.
B60980	Tpr.	Hearns O.K.L.	HQ.	Gunnery		15-2-41.
61029	Cpl.	Selby A.G.	HQ.	Gunnery		15-2-41.
B61068	Tpr.	Willoughby G.R.	"A"	Gunnery		15-2-41.
B60679	L/Cpl.	McKnight L.R.	"A"	Gunnery		15-2-41.
B60755	Tpr.	Mann C.J.	"A"	Gunnery		15-2-41.
B61034	Cpl.	Gawley J.P.	"A"	Gunnery		15-2-41.
B60844	Tpr.	Smith C.E.	"B"	Gunnery		5-3-41.
B606 -	Cpl.	Huggins O.W.	"C"	Gunnery		5-3-41.
B60921	L/Cpl.	St. Lawrence G.M.H.	"D"	Gunnery		5-3-41.
B60938	Tpr.	Ball S.A.	"D"	Gunnery		5-3-41.
B61101	Tpr.	Bloom E.J.	HQ.	Gunnery		5-3-41.
B60747	Tpr.	Banane A.W.	"B"	Gunnery		5-3-41.
B60725	Tpr.	Weeks D.	"B"	Gunnery		5-3-41.

THE 11TH ARMY TANK BATTALION
(ONT. R.)
1 CAN. ARMY TANK BRIGADE

ORDERS BY
MAJOR J.S. GOW

ORDER NO. 105 PART II CAMP BORDEN
SHEETS: 4 (SHEET NO. 3) DATED 6TH JUNE 41

8. QUALIFICATIONS (For Record Purposes only)

(a) REGTL. NO.	RANK	NAME	SQN.	SUBJECT	GROUP	DATE
B60810	Tpr.	Little S.M.	HQ.	Gunnery		5-3-41.
B60506	Cpl.	Wood B.	HQ.	Gunnery		5-3-41.
B60675	Tpr.	Read V.T.	"A"	Gunnery		5-3-41.
B60923	Sgt.	Sullivan J.	"B"	Gunnery		5-3-41.
B60707	Tpr.	Varieur R.Y.	HQ.	Gunnery		5-3-41.
B61014	Tpr.	Osborne T.	HQ.	Gunnery		5-3-41.
B61011	Cpl.	Naylor J.	"A"	Gunnery		5-3-41.
B60925	Tpr.	Taylor J.H.	"B"	Gunnery		5-3-41.
B61083	Tpr.	McGolrick R.	"B"	Gunnery		5-3-41.
C5276	Tpr.	Ashby W.M.	"B"	Driver I.C.	Class II I	4-4-41.
B60634	Tpr.	Mayne J.E.W.	HQ.	Driver I.C.	Class II I	4-4-41.
B61191	Tpr.	Brown A.W.	"B"	Driver I.C.	Class II I	4-4-41.
B60886	Tpr.	Harvie J.R.	"A"	Driver I.C.	Class II I	4-4-41.
B60660	Tpr.	Hockley W.J.	"A"	Driver I.C.	Class II I	4-4-41.

9. ATTACHMENTS

(a) The undermentioned personnel cease to be attached to Army Trade School, Hamilton, Ontario for Duty, Discipline, Rations and Quarters on return to Unit, effective 1900 hrs. 6-6-41. (and T36-14-29 dtd 30-5-41)
B60911 Cpl. Renardson H.S. "B"
B60572 Tpr. Krasutsky M. "C"
B61025 Tpr. Robb R.J. "C"

10. CHANGE OF ADDRESS - NEXT OF KIN

(a) B61150 Tpr. Roberts C.A. HQ. Changes the address of his next of kin:
From: Mrs. Margaret Roberts (Wife),
42 McCamus Avenue,
Kirkland, Lake, Ontario.
To: Mrs. Margaret Roberts (Wife),
40-A Third Street,
Kirkland Lake, Ontario.

11. HOSPITAL

(a) Lieut. F.J. Thibodeau "A" Discharged from C.D.M.H., eff. 4-6-41.
(b) B61226 Tpr. Floyd T. "C" Discharged from C.D.M.H., eff. 4-6-41.
(c) B60865 Tpr. Callaghan H. "A" Discharged from C.D.M.H., eff. 5-6-41.

12. ABSENT WITHOUT LEAVE

(a) A55043 Tpr. Pursell R. "C" A.W.L. from 2200 hrs. 29-5-41. (8 Days)
(b) B19057 Tpr. John A.R. "C" A.W.L. from 0200 hrs. 4-6-41.
(c) B19056 Tpr. Moore H.E. "C" A.W.L. from 0200 hrs. 4-6-41.
(d) B60620 Tpr. Hale L. "B" A.W.L. from 0200 hrs. 4-6-41.
(e) B74549 Tpr. Reay J. HQ. A.W.L. from 0200 hrs. 4-6-41.
(f) B61105 Tpr. Chenier L. HQ. A.W.L. from 0200 hrs. 4-6-41.
(g) B61116 Tpr. Giroux L.R. HQ. A.W.L. from 0200 hrs. 4-6-41.
(h) B19056 Tpr. Moore H.E. "C" Returned from A.W.L. at 1130 hrs. 5-6-41.
(i) B61116 Tpr. Giroux L.R. HQ. Returned from A.W.L. at 1400 hrs. 5-6-41.
(j) B61105 Tpr. Chenier L. HQ. Returned from A.W.L. at 1400 hrs. 5-6-41.
(k) B60620 Tpr. Hale L. "B" Returned from A.W.L. at 1500 hrs. 5-6-41.
(l) B74549 Tpr. Reay J. HQ. Returned from A.W.L. at 2300 hrs. 4-6-41.
(m) B60884 Tpr. Grist P.H. "A" A.W.L. from 06 00 hrs. 4-6-41.
(n) B61834 Tpr. Reid D.E. "A" A.W.L. from 0000 hrs. 4-6-41.

THE 11TH ARMY TANK BATTALION
(ONT. R.)
1 CAN. ARMY TANK BRIGADE

ORDERS BY
MAJOR J.S. GOW
PART II

ORDER NO. 105 — CAMP BORDEN
SHEETS: 4 (SHEET NO. 4) — DATED 6TH JUNE 41

13. PUNISHMENTS

(a) B74549 Tpr. Reay J. HQ. Having been held in open arrest awaiting trial, ordered to forfeit two (2) days Ordinary Pay under Section 46(2) A.A. and forfeits one (1) days Pay and Allowances under F.R.&I. for: "A.W.L. from 0200 hrs. 4-6-41 to 2300 hrs. 4-6-41." (Absent 21 hrs.)
Date of Offence - 4-6-41.
Date of Award - 6-6-41.
Total Forfeiture - Three (3) Days.

(b) B61105 Tpr. Chenier L. HQ. Having been held in open arrest awaiting trial, Admonished and forfeits two (2) days Pay and Allowances under F.R.&I. for: "A.W.L. from 0200 hrs. 4-6-41 to 1400 hrs. 5-6-41." (Absent 36 hrs.)
Date of Offence - 4-6-41.
Date of Award - 6-6-41.
Total Forfeiture - Two (2) Days.

(c) B61116 Tpr. Giroux L.R. HQ. Having been held in open arrest awaiting trial, Admonished and forfeits two (2) days Pay and Allowances under F.R.&I. for: "A.W.L. from 0200 hrs. 4-6-41 to 1400 hrs. 5-6-41." (Absent 36 hrs.)
Date of Offence - 4-6-41.
Date of Award - 6-6-41.
Total Forfeiture - Two (2) Days.

(d) B60620 Tpr. Hale L. "B" Having been held in open arrest awaiting trial, Ordered to forfeit two (2) days Ordinary Pay under Section 46(2) A.A. and forfeits two (2) days Pay and Allowances under F.R.&I. for: "A.W.L. from 0200 hrs. 4-6-41 to 1500 hrs. 5-6-41." (Absent 37 hrs.)
Date of Offence - 4-6-41.
Date of Award - 6-6-41.
Total Forfeiture - Four (4) Days.

(e) B19056 Tpr. Moore H.E. "C" Having been held in open arrest awaiting trial, Awarded extra fatigues and forfeits two (2) days Pay and Allowances under F.R.&I. for: "A.W.L. from 0200 hrs. 4-6-41 to 1130 hrs. 5-6-41." (Absent 1 day 9 hrs. 30 min.)
Date of Offence - 4-6-41.
Date of Award - 5-6-41.
Total Forfeiture - Two (2) Days.

N J Miller Lieut

for (J.T.F. Orr) Captain
Adjutant
The 11th Army Tank Battalion (Ont. R.)

ARMY FORM B 116.

THE 11TH CDN. ARMY TANK BN. *REGIMENT.*
(ONT. R.)

STATION Field Date 19

Application for a Field General *Court-Martial.*

SIR,

I have the honour to submit two charges against No. B60967 Tpr. Fairborn W.G. of the Unit under my command, and request that a Field General Court-Martial may be assembled for his trial at Field.

The Case was investigated by (*a*) Major J.H. Perry, M.C., A/O.C.

~~[illegible]~~ [illegible]

~~[illegible]~~ [illegible]

President

Members

Ranks, Names and Corps.

The accused is now at this Unit His General Character is (*c*) FAIR

I enclose the following documents (*d*) :—

1. ✓ Charge Sheet (in duplicate) (*e*).
2. ✓ Summary of Evidence, original (*f*) and ~~(if)~~ copy.
3. ✓ Original Exhibits (*g*). copies.
4. ✓ List of witnesses for the prosecution and defence (with their present stations or addresses) (*g*).
5. ✓ List of Exhibits (*h*).
6. ~~Correspondence (g).~~
7. Statement as to character (A.F.B. 296) and regimental and company, etc., conduct sheets of accused (*g*).
8. ✓ Statement by accused as to whether or not he desires to have an officer assigned by the Convening Officer to represent him at the trial (*h*) [R.P. 14 (B)].

I have the honour to be,
Sir,
Your obedient Servant,

Signature of Commanding Officer J. H. Perry Maj

To The Officer Commanding
1 Cdn. Army Tank Bde.

MEDICAL OFFICER'S CERTIFICATE.

I CERTIFY that No. B60967 Pr Fairborn C.A.C.(A) T.C. Regiment is* fit to undergo trial by Court-Martial.

Signature of the Medical Officer A.A. Mackay

* Insert "fit" or "unfit."

(*a*) Here insert name of :—
(i) Officer who investigated the charges.
(ii) Company, etc., Commander who made preliminary enquiry into the case.
(iii) Officer who took down the Summary of Evidence [R.F. 19 (B) (iii)].
(*b*) To be filled in if there has been a Court of Inquiry respecting any matters connected with the charges, otherwise to be struck out [R.P. 19 (B) (iii)].
(*c*) To be filled in by the Commanding Officer.
(*d*) Any items not applicable to be struck out.
(*e*) One copy to be sent to the President; one copy to be filed with the application for trial.
(*f*) Original summary of evidence to be sent to the President.
(*g*) 2, 4, 6 and 7 to be returned to the Officer Commanding the unit of the accused with the notice of trial.
(*h*) 5 and 8 to be sent to the President.

If the accused has elected to be tried under A.A. 46 (8) the fact should be recorded at the top of this form.

W.A.2120/101 30,000 4/40 A.C.H.W.Ltd. (40-46) Forms/B116/16

MEDICAL OFFICER'S REPORT

I certify that No. B-60967 Tpr. Fairborn W.G.
of A2G.A.C.(A) T.C. is in a fit state of health,
and able to undergo Trial by Court martial.

A. W. Mackay Capt. RCAMeC
Medical Officer

Station Lavington Downs

Date 5-8-41

M. F. B. 246
20M—3-40 (4793)
H.Q. 1172-39 430

File No. O.R. 6-1-2.

THE 11TH CDN. ARMY TANK BATTALION (ONT. R.)
FIELD, ENGLAND

2nd August, 1941.



Headquarters,
1 Cdn. Army Tank Bde.,
Field, England.

B60967 TPR. FAIRBORN W.G.

Attached please find Application for a Field General Court Martial and a Summary of Evidence for the m/n Trooper of A-9 C.A.C.(A).T.C., Camp Borden, Ontario and presently attached for Discipline, Rations and Quarters to the 11th Cdn. Army Tank Bn. (Ont. R.) C.A.(O).

2. This is in accordance with verbal instructions issued by the Staff Captain, 1 Cdn. Army Tank Bde.

3. May this be acknowledged, please.

(J.H. Perry) Major
A/O.C. The 11th Cdn. Army Tank Bn. (Ont. R.)

THE 11TH CDN. ARMY TANK BN. (ONT. R.)
FIELD, ENGLAND

1st August, 1941.

I, B60967 Tpr. William George Fairborn, wish to have an Officer assigned to defend me in my Trial by Court Martial.

...W.G. Fairborn.....TROOPER
B60967 (W.G. Fairborn) A-9 C.A.C.(A).
T.C.

H.Q.C. 55-F-857 CONFIDENTIAL

DEPARTMENT OF NATIONAL DEFENCE OTTAWA, CANADA

SUBJECT

FIELD GENERAL COURT-MARTIAL

FEHR, ERNEST K-42340 TPR.

CENTRAL REGISTRY	DATE	T.S. OR S.F.	INITIALS	REFERRED TO	FOR	INITIALS	DATE
				(If paragraphs which referred request be commenced on one side only, other here "Fill Minute")			2-12-46

CONFIDENTIAL
H.Q.C. 55-F-857

OVERSEAS COMBINED

NOTICE

SCHEDULE.

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

Accused: K-42340 Tpr Frehn, E 18 Cdn Armd C Regt.

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

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

~~At present under sentence for~~ ~~28~~ beginning on (date) ..... (2)

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

Time in confinement awaiting present trial—a total of 30 days, of which 0 days were spent in hospital.(1)
(1. See RP 46(A) fn 2. Information should be found on MF B355 or AF B296 admitted in evidence under E2.)

Sentence Awarded by the Court:

To suffer field punishment for 60 days and to forfeit all ordinary pay for a period of 60 days.

(Sgd) Gordon H. Jermyn 4 Oct 44 (Sgd) Barclay Major
Judge-Advocate, if any. Date awarded. President. (RP 48, 50.)
(See back of Convening Order as to assembly and disposal of record after trial.)

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

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

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

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

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

"Confirmed"

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

Date 9 Oct '44 (Sgd) W.H. Mathews
Commanding CCRA 2 Cdn Corps
Confirming Officer.

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

Accused. Date. Signature of Offr.

E. Frehn 16 Oct 1944 H. Thompson Capt a/Adj

ALL DELETIONS AND ALTERATIONS WILL BE INITIALLED.

RECEIVED 3 OCT 1944 JAG BRANCH G.H.Q.

RECORDED AT CMHQ IN AB 149 4C-6-3

FIELD GENERAL COURT-MARTIAL

CFAB6 (In lieu of AFAB) 40-P-8-1698 (2864)

Convened by Order of Brig A.B. Matthews Comd CCRA 2 Cdn Corps dated 30 Sept 44

ACCUSED.

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

Number.	(a) Prmnt R. (b) Appmt, A/R or A/Appmt.	Full Christian Names.	Surname.	Unit.
K-42340	Tpr	Ernest	Frehn	18 Cdn Armd C Regt

PROCEEDINGS REVIEWED 7 Oct 44
J.A. Swanson Lt-Col
REVIEWING OFFICER, JAG BRANCH G.H.Q.

PROCEEDINGS REVIEWED Date 2 Oct 44 J.A. Cdn. Sec. G.H.Q. 2 Echn, Army Gp

PROCEEDINGS OF TRIAL.

Held in the Fd in (country) Belgium on (date(s)) 4 Oct 44

RECORD FORM A—OPENING PROCEEDINGS AND ARRAIGNMENT. 12/20

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

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

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

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

A4. The Prosecutor produces a Medical Certificate that accused is (~~if~~) fit to undergo trial by court-martial.(1)
~~The Prosecutor informs the Court that accused elected to be tried by court-martial instead of being dealt with summarily by the CO.(2)~~
(1. KR Can 557. 2. AA 46(8), PP 60 fn 1. For effect see KR Can 563(c). Delete, if not applicable.)

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

A6. The Convening Order and names of the President and Members of the Court are read to the accused.(1) President to accused: Do you object to be tried by me as President or by any of the Members of the Court?
Ans No Sir (2)
(1. RP 110. 2. If no objection, waiting member retires. RP 68(8). If objection, see procedure AA 51, RP 25, 71, 18, MML p 742.)

A7. The President, Members, JA, ~~if any, and Offrs under instr, if any~~, are sworn.(1) The following are the ranks, names and units of the offrs comprising the Court, etc:

President	Major	Guy Barclay	HQ RCEME 2 Cdn C Tps
Member	Capt	W.R. Clay	Sqn HQ 2 Cdn Corps
Member	Lt	E.F. McKnight	HQ 2 Cdn Corps
Judge-Advocate	Capt	G.H. Jermyn	HQ 2 Cdn Corps
Prosecutor	Lt	K.I. Jefferson	18 Cdn Armd C Regt
Defending Offr	Lt	A.B. Wright	18 Cdn Armd C Regt

Questions by President: Is the Prosecutor a lawyer? Ans NO. Is the Defending Offr a lawyer? Ans NO.(2)
(1. RP 26, 27, 109, 111. List of offrs under instr will be returned separately with proceedings for information of Conv Offr.)
(2. If Pros a lawyer and Def Offr not, accused is entitled to an adjournment when RP 89 (8) and fn 2 were not followed. See DI p 3.)

A8. The accused ..... before arraignment make(s) (no) ~~objection~~ plea(s).(1)
(1. If a special plea is made for separate trial on one or more charges (RP 62(E), 108), or as to the jurisdiction of the Court (RP 34, 38(B), 113), or in bar of trial (RP 36), or as to accused's mental fitness to stand trial (AA 138, RP 57), or by one of several accused charged jointly to be tried separately (RP 16, 71), such plea, the addresses made in support or against, the evidence, if any, and findings are recorded per Notes. For forms of record see references in fns to RsP cited. Insert in AB rank and name of the accused making the plea.)

A9. The accused is (~~if~~) arraigned (separately) on all charges in the charge sheet.(1) The accused does ~~if~~ not object to any charge.(2) There is no amendment to be made to the Charge Sheet.(3) The President records the pleas in Part I of the Schedule.
(1. RP 39, 112. See para 1 of Instrs p 2. When more than one Charge Sheet see RP 62; when several accused to be tried separately see RP 71(C), and use separate copies of CF A96 to record proceedings. 2. RP 52, RP 53. If otherwise, delete and ... record per Notes.)

... Insert on Procedure after Arraignment at top of p 2. The pro...

ALL DELETIONS AND ALTERATIONS WILL BE INITIALLED.

RECORDED AT CMHQ IN AB 180 4C-63

FIELD GENERAL COURT-MARTIAL

CFA96 (In lieu of AFA31) 40/P & S/1698 (20641)

RECEIVED 21 OCT 1944 JAG BRANCH O.M.H.Q.

Convened by Order of Brig A.B. Matthews Comd CCRA 2 Can Corps dated 30 Sept 44

SCHEDULE.

PART I. PLEA(S), FINDING(S) AND SENTENCE.

Accused: K-42340 Tpr Fedus, E 18 Edn Armd C Regt.

Charge. (Insert "alternative" where applicable.)	Plea. (See Instrs p 2.)	Finding. (See note below.)	(Space for use as required for further charges, accused charged jointly, special findings, etc.)
1st	GUILTY	GUILTY	
2nd			
3rd			
4th			
5th			
6th			

(Note: As to findings for lesser offences see AA 56, RP 44; findings on alternative charges see MML p 483 fn 4 para 2, RP 44; special findings see RP 44 and MML p 753, and in loss of kit see RP 44 fn 6.)

~~At present under sentence for ..... beginning on (date) .....~~ (1)

(1. Insert sentence being served, or delete, if not applicable. See RP 46(A). Information should be found on MF B355 or AF B296.)

Time in confinement awaiting present trial—a total of 30 days, of which 0 days were spent in hospital.(1)

(1. See RP 46(A) fn 2. Information should be found on MF B355 or AF B296 admitted in evidence under E2.)

Sentence Awarded by the Court:

To suffer field punishment for 60 days and to forfeit all ordinary pay for a period of 60 days.

(Sgd) Gordon H. Jennings, Judge-Advocate, if any. 4 Oct 44, Date awarded. (Sgd) Guy Barclay Major, President. (RP 48, 50.)

(See back of Convening Order as to assembly and disposal of record after trial.)

PART II. MINUTE WHERE CONFIRMATION RESERVED. (AA 54(5), RP 120(1), MML p 760.)

Date ..... (Sgd) ..... Commanding .....

PART III. DECISION OF CONFIRMING OFFR ON FINDING(S) AND SENTENCE.

(For duties and powers see AA 54, 57, RP 37(D) fn 6, 46(A), 51-56, 120, MML pp 759-761, KR Can 567-577. Acquittals require no confirmation and cannot be revised: AA 54(3). Sending back finding or sentence for revision by Court: AA 54(2), RP 120(G). If not confirmed, accused may be tried again: AA 157, MML p 64. Minute of confirmation or non-confirmation may be altered before promulgation: RP 53, MML p 65. Quashing after promulgation: KR Can 573. Duties and powers of reviewing offrs: AA 57, 57A, RP 53A, 54. The Confirming Offr must sign here personally. AA 172 fn 1.)

My decision on the finding(s) and sentence set forth in Part I is:

"Confirmed"

~~I direct that the accused be not committed to prison or detention barracks until further orders.~~(1)

(1. AA 57A. Delete if not used.)

Date 9 Oct 44 (Sgd) W Matthews Commanding CCRA 2 Can Corps Confirming Officer.

PART IV. PROMULGATED AND EXTRACTS TAKEN. (RP 53, KR Can 576, 577.)

Accused.	Date.	Signature of Offr.
E Fedus	18 Oct 1944	[illegible] Capt & Adjt

ALL DELETIONS AND ALTERATIONS WILL BE INITIALLED.

PROCEEDINGS REVIEWED Date 24 Oct 44 J.A. Cdn. Sec. G.H.Q. 2 Echn. Army Gp.

PROCEEDINGS REVIEWED 21 Oct 44 J.A. Chaundler Lieut-Col REVIEWING OFFICER, JAG BRANCH O.M.H.Q.

PROCEEDINGS OF TRIAL.

Held in the Fd in (country) Belgium on (date(s)) 4 Oct 44

RECORD FORM A—OPENING PROCEEDINGS AND ARRAIGNMENT. 12/20

A1. The President, Members, ~~waiting Member~~, JA, ~~if any, and Offrs under instr, if any~~, assemble, and the Court is closed.

(PRINTED MATTER, NOT IN ITALICS FOR GUIDANCE, WILL BE DELETED, IF NOT USED OR APPLICABLE, AND INITIALLED BY PRES OR JA. The Schedule referred to throughout is on p 4. Citations do NOT include all relevant fmn ROs. For guidance on procedure when a variation in this form arises, see form for GCM in MML pp 741 to 759. A brief record of such variation will be made and given a number having reference to appropriate or preceding para number herein. See back of Convening Order, CF A95, for oaths and instrs on how to record addresses, evidence, etc., which instrs are hereafter called "Notes". As to general provisions for conducting the trial see AA 53, RP 56, 63-70, 73, 74, 94, 103, 119, 132.)

A2. The President initials and lays before the Court the Convening Order and Charge Sheet ~~(and ..... attached thereto)~~.(1) The Court is satisfied that it is properly convened and constituted(2), accused is (~~not~~) amenable to military law, and each charge discloses an offence.(3)

(1. As to use of Summary of Evidence see RP 17 fn 6. 2. AA 49, 50, RP 105-107. 3. RP 11-13, 23, 24.)

A3. The Court is opened. The accused is (~~not~~) brought before the Court. At 1400 hours trial commences.

A4. The Prosecutor produces a Medical Certificate that accused is (~~not~~) fit to undergo trial by court-martial.(1)

~~The Prosecutor informs the Court that accused elected to be tried by court-martial instead of being dealt with summarily by the CO.(2)~~

(1. KR Can 557. 2. AA 46(8), RP 60 fn 1. For effect see KR Can 563(c). Delete, if not applicable.)

~~A5. President to accused: Do you object to ..... as interpreter? Ans .....~~

~~The Interpreter is sworn.(1) Do you object to ..... as shorthand writer? Ans .....~~

~~The shorthand writer is sworn.(1)~~

(1. RP 72. Delete, if none employed.)

A6. The Convening Order and names of the President and Members of the Court are read to the accused.(1) President to accused: Do you object to be tried by me as President or by any of the Members of the Court?

Ans No sir.(2)

(1. RP 110. 2. If no objection, waiting member retires. RP 68(3). If objection, see procedure AA 51, RP 25, 71, 18, MML p 742.)

A7. The President, Members, JA, ~~if any, and Offrs under instrs, if any~~, are sworn.(1) The following are the ranks, names and units of the offrs comprising the Court, etc:

President	Major	Guy Barclay	HQ RCEME 2 Can C Tps
Member	Capt	W.R. Clark	Legs HQ 2 Can Corps
Member	Lt	E.F. McKnight	HQ 2 Can Corps
Judge-Advocate	Capt	J.H. Jennings	HQ 2 Can Corps
Prosecutor	Lt	K.J. Jefferson	18 Can Armd C Regt
Defending Offr	Capt	A.B. Wright	18 Can Armd C Regt

Questions by President: Is the Prosecutor a lawyer? Ans NO Is the Defending Offr a lawyer? Ans NO (2)

(1. RP 26, 27, 109, 111. List of offrs under instr will be returned separately with proceedings for information of Conv Offr.)
(2. If Pres a lawyer and Def Offr not, accused is entitled to an adjournment when RP 89 (B) and fn 2 were not followed. See Dir p 3.)

A8. The accused ..... before arraignment make(s) (no) ~~...~~ plea (1)

(1. If a special plea is made for separate trial on one or more charges (RP 62(E), 108), or as to the jurisdiction of the Court (RP 34, 35(A), 113), or in bar of trial (RP 36), or as to accused's mental fitness to stand trial (AA 130, RP 57), or by one of several accused charged jointly to be tried separately (RP 16, 71), such plea, the addresses made in support or against, the evidence, if any, and finding are recorded per Notes. For forms of record see references in fns to RoP cited. Insert in AB rank and name of the accused making the plea.)

A9. The accused is (~~not~~) arraigned (separately) on all charges in the charge sheet.(1) The accused does ~~not~~ object to any charge.(2) There is no amendment to be made to the Charge Sheet.(3) The President records the pleas in Part I of the Schedule.

(1. RP 31, 112. See para 1 of Instrs p 2. When more than one Charge Sheet see RP 62; when several accused to be tried separately see RP 71(C), and use separate copies of CF A96 to record proceedings. 2. RP 32, RP 33. If otherwise, delete and make appropriate record per Notes.)

A10. The Court ~~(without a Jud)~~ considers the Instrs on Procedure after Arraignment at top of p 2. The proceedings are continued on Record Form B & E.

PRESIDENT OR JA WILL INITIAL ALL DELE[illegible] ALTERATIONS.

2 Corps Book III p 36

INSTRUCTIONS ON PROCEDURE AFTER ARRAIGNMENT.

1. *The accused may not plead or be found Guilty on more than one of two or more charges laid in the alternative.* (*RP* 37(*A*).) *As to withdrawal of alternative charges by Prosecutor see RP* 35(*C*). *No other charge can be withdrawn for any reason without authy from Convening Offr. If Convening Offr concurs, Court may accept plea of Guilty to lesser, etc, offence.* (*RP* 44(*H*).) *Accused may change a plea of Not Guilty to Guilty during trial.* (*RP* 38.) *As to refusing to plead or not pleading intelligibly see RP* 35(*A*). *As to plea when sentence may be death see RP* 35(*D*).

2. *The proceedings on each charge sheet* (*RP* 62) *after arraignment will be conducted as follows in the respective circumstances stated:*

I. If pleas to all charges are GUILTY, use Record Form B below.

II. If pleas to all charges are NOT GUILTY, use Record Form D on p [redacted] 3.

III. If pleas to some charges are GUILTY and to other charges are NOT GUILTY and,

(a) *Such mixed pleas occur when there are no alternative charges in the Charge Sheet, use Record Form C below.* (*RP* 37(*A*).)

(b) *Such mixed pleas occur in a set of two or more charges laid in the alternative, see RP* 37 (*A*) *and fn* 2 *as to discretion of Court,* (i) *to try the accused on all such alternative charges as if he had pleaded Not Guilty thereto, or,* (ii) *to record the pleas as the findings of Court. After deciding between* (i) *and* (ii), *Court will proceed under foregoing instrs as may be appropriate to result of its decision. See MML p* 744 *Instrs* (2).

3. *As to responsibility of President to accused see RP* 59, 60(*C*); *powers and duties of JA see RP* 103; *duty of Prosecutor see RP* 60(*A*) (*B*); *duty and privileges of accused and Defending Offr see RP* 60(*C*), 87(*C*), 91, 92; *swearing and withdrawal of witnesses from Court see RP* 81, 82; *questioning of accused see RP* 80, 87(*C*), 92(*B*), *and of witnesses see RP* 83-85; *calling or re-calling of witnesses by Court etc see RP* 75-79, 86, 116; *use of Summary of Evidence at Trial see RP* 17(*E*) *fn* 6; *and responsibility of JA or Pres to record proceedings see RP* 94, 96.

RECORD FORM B—PROCEEDINGS ON PLEAS OF GUILTY TO ALL CHARGES.

B1. The ~~President to~~ JA, ~~if any~~, complies with RP 35(B) by explaining to the accused the nature and meaning of the charge(s)[1], and that on his plea of Guilty there will be no regular trial but merely a consideration of the sentence to be awarded after he has been given an opportunity to make a statement in reference to the charge(s)[2] call witnesses as to character and make an address in mitigation of punishment.[2]

(*1. RP* 35 *fn* 3. *2. MML p* 54 *para* 47.)

B2. President to accused: The Court will now receive any statement you desire to make in reference to the charge(s)[1] If it appears from your statement that there are circumstances which indicate that you do not understand the effect of the plea of Guilty[2], or which show provocation or extenuation in respect of which in your interest the witnesses for the Prosecution should be examined[3], we shall advise you to change your plea to Not Guilty. In making a statement you will not be sworn or subject to cross-examination; and anything you say will not be used in evidence against you after you change your plea. If, however, it appears to the Court that your statement affects only the amount of punishment to which you are liable, you will not be advised to change your plea and you will be given an opportunity later to prove your statement by sworn testimony, if you so desire.[4]

President to accused: Do you wish to make a statement ? Ans. No SIR [5]

(*1. RP* 37(*B*). *2. RP* 37(*D*) *fn* 6. *3. RP* 35(*B*) *fn* 5 *para* 3, *MML p* 54 *para* 47. *4. See para E3 of Record Form E.*
5. Statement, if any, recorded per Notes.)

~~B3. The Court considers the accused's statement.[1] The Court decides (not) to advise accused to change his (their) plea(s) of Guilty to Not Guilty on charge(s). The accused is (are) so informed, and he (they) change(s) his (their) plea(s) on charge(s). Part I of the Schedule is amended accordingly.~~

(*1. Court may be closed to consider the statement. Delete whole or part not used.*)

B4. On the charge(s) to which the plea(s) of Guilty is (are) not changed the President records findings of Guilty in Part I of the Schedule.[1]

(*1. RP* 35(*B*). *If any plea(s) is (are) changed, use Record Form C or D as appropriate.*)

B5. The Summary of Evidence is marked Ex A, initialled and read aloud by the President.[1]

(*1. If there is no Summary, or if it is inadequate, comply with RP* 37(*B*). *If there is any evidence inconsistent with any plea standing as Guilty, Court will advise accused to change such plea and, if changed to Not Guilty, try such charge(s) by use of paras D1 to D8 inclusive of Record Form D on p* 3. *RP* 37(*D*).)

B6. The accused having been found Guilty on one or more of the charges, the proceedings are concluded by using Record Form E on p 3.

RECORD FORM C—PROCEEDINGS ON MIXED PLEAS OF GUILTY AND NOT GUILTY.

C1. As to the charges on which accused pleaded NOT GUILTY the trial is continued by using paras D1 to D8 inclusive of Record Form D on p 3 before proceeding with C 2.[1]

(*1. RP* 37(*A*) (*E*).)

C2. The charges on which accused pleaded GUILTY are read to him (them) again, and the trial is continued by using paras B1 to B5 of Record Form B above.[1]

(*1. Under B5 such parts only of the Summary of Evidence are read as relate to the charges dealt with under C2. If any plea is changed to Not Guilty, trial thereon proceeds by complying with paras D1 to D8 inclusive in Record Form D on p 3 and making an appropriate record thereof on a separate sheet.*)

C3. The accused having been found Guilty on one or more of the charges, the proceedings are concluded by using Record Form E on p 3.

PRESIDENT OR JA WILL INITIAL ALL DELETIONS AND ALTERATIONS.

Pin here Loose Sheets of Record.

RECORD FORM D—PROCEEDINGS ON PLEAS OF NOT GUILTY TO ALL CHARGES.

D1. President to accused: Do you wish to apply for an adjournment on the ground that any of the rules relating to procedure before trial have not been complied with, and that you have been prejudiced thereby, or on the ground that you have not had sufficient opportunity to prepare your defence ? Ans. [1]

(*1. If "yes", see RP* 39(*A*) *for procedure. Statement or evidence, if any, as recorded per Notes.*)

D2. The Prosecutor makes (an) (no) opening address.[1]

(*1. RP* 39(*B*), 39(*A*) (*B*), 90, 92(*C*) (*D*). *Record address per Notes, subject to RP* 95(*C*).)

D3. The evidence for the Prosecution is taken.[1]

(*1. RP* 39(*C*), *114, KR Con* 555. *Record evidence per Notes. As to Prosecutor giving evidence himself see RP* 39(*D*) (*E*).)

D4. The Prosecution is closed.[1] The Defending Offr submits that the evidence for the Prosecution does not establish a prima facie case against the accused on the charge(s).[2] The Court is closed, and considers the submission.[3] The Court is re-opened, and the President announces that the submission is disallowed on the charge(s), and allowed on the charge(s), and that, accordingly, the trial will proceed on the former, but the accused is (are) found Not Guilty on the latter charge(s).[4]

(*1. Delete remainder of this para, if submission not made. 2. Arguments on submission, answer and reply are recorded per Notes. 3. RP* 40 *fn* 1. *See MML p* 72 *paras* 12-14 *and p* 81 *para* 42. *4. Delete part not used. If accused acquitted on all charges, use second alternative in para D8.*)

NB: If trial proceeds, accused must be allowed great latitude in making his defence, and the Court should not stop his defence solely on ground of irrelevance. (*RP* 60(*C*), *114, 115.*)

D5. President to accused: You will now proceed with your defence.[1] You may, if you wish, give evidence yourself on oath as to the facts or your character or both, in which case you will be subject to cross-examination.[2] You may, however, make a statement without being sworn, and you will not be subject to cross-examination.[3] But a statement which could have been made on oath will not carry with the Court the same weight as sworn testimony.[4] You may call witnesses in your defence and as to character, whether you give evidence or make a statement or do neither.

President to accused: Do you wish to give evidence yourself as a witness, make a statement, or do neither ? Ans. Do you intend to call witnesses on your behalf ? Ans. Are they witnesses as to character only ? Ans.

(*1. RP* 155. *2. RP* 40(*A*), *see* 80(*D*). *3. RP* 40 *fn* 10. *4. RP* 40 *fns* 2, 9.)

D6. Consequent on the answers recorded in para D5 the appropriate procedure for the defence is followed.[1]

(*1. RP* 114, 115, 116. *For procedure see Notes on back of Convening Order, CF A95. Evidence for accused as to his character should, if in his interest, be given before the finding. See RP* 46(*A*) *fn* 1, 86(*C*). *Note the further opportunity in para E1 of Record Form E. Record per Notes addresses, statement, evidence and any summing up by the JA under RA* 42, 103(*e*).)

D7. The Court is closed to consider the finding(s).[1] The finding(s) of the Court is (are) recorded in Part I of the Schedule.[2] The Court is re-opened.

(*1. RP* 43, 117(*A*). *See Notes in Part I of Schedule. 2. RP* 44(*A*).)

D8. The President announces the finding(s), if any, of Not Guilty, and states to the accused that the finding(s) of the Court on the charge(s), being subject to confirmation, will be promulgated later.[1]

Or, The President announces that the accused is found Not Guilty on all charges and is to be released forthwith, and that the proceedings are accordingly terminated. Part I of the Schedule is dated and signed.[2]

(*1. AA* 54(3) (*b*), *RP* 45, 120(*A*). *2. AA* 54(3), *RP* 45, 117. *This alternative announcement is not applicable when there are pleas of Guilty outstanding and dealt with under Record Form B or C.*)

D9. The accused having been found Guilty on one or more of the charges, the proceedings are concluded by using Record Form E below.

RECORD FORM E—PROCEEDINGS ON CONVICTION BEFORE SENTENCE.

E1. President to accused: Do you wish to give evidence yourself or to call any witnesses as to your character ?[1]

Ans. No SIR

(*1. If evidence has already been given by accused or his witnesses as to his character, delete this para. RP* 37(*C*) *fn* 4, 46 *fn* 1. *Accused and witnesses are sworn. Evidence recorded per Notes.*)

E2. The Prosecutor produces Statement[1] as to Character and Particulars of Service[1], and certified true copy [illegible] of Conduct Sheet[1], purporting to refer to the accused, which he submits to the Defending Offr for examination, and then to the Court for admission in evidence. The Court is satisfied that these documents refer to the accused, because (i) they purport to be signed in the manner required by AA 163(l) (g) (h), and (ii) they purport to refer to (a) soldiers having the same number, rank, name and corps as the accused. Admitted in evidence and marked Ex B and Ex C respectively.[2]

(*1. MFB* 355 *or AFB* 296. *2. MFM* 6. *3. RP* 46, *KR Con* 558. *If above documents not produced, see RP* 46 *fn* 1 *para* 1.)

E3. President to accused: Do you wish to address the Court on the Statement[1] and Conduct Sheet[1], and in mitigation of punishment ?[1] Ans. Yes sir by my defending officer [2]

(*1. RP* 37(*C*), 46(*D*). *2. Address, if any, recorded per Notes. Court should permit accused or his witnesses to prove on oath anything here or previously stated which would affect the amount of punishment. RP* 37(*F*) *fn* 7.)

E4. The President states that the Court is closed to consider the sentence, and that the sentence to be awarded by the Court, being subject to confirmation, will not be announced, but will be promulgated later, and the proceedings in open court are accordingly terminated.[1]

(*1. AA* 54(5), *RP* 120(*A*).)

E5. The Court considers the sentence.[1] The President records the sentence in Part I of the Schedule, which is dated and signed by him and the JA, if any.[2]

(*1. When several accused tried separately see RP* 7(*b*). *One sentence only, comprised of the punishment or punishments laid down in AA* 41, 44 *and its proviso, is to be awarded to cover all charges in all charge sheets on which accused found guilty. RP* 48. *As to sentences see AA* 44, 138, 182, *RP* 46-50, 69, 118, 119(*A*), *KR Con* 308, 330, 563-566, *Overseas RO* 509, 2203, *MML p* 60, 757-759. *As to sentences suspended for civil offences by the law of England see AA* 41(5), *MML p* 120. *When accused already under sentence of imprisonment or detention see AA* 44(18), 68(1), *KR Con* 564. *2. RP* 50. *As to release from arrest by Confirming Offr see KR Con* 567. *As to assembly and disposal of record after trial see instrs on back of Convening Order.*)

PRESIDENT OR JA WILL INITIAL ALL DELETIONS AND ALTERATIONS.

Exhibit 2

CHARGE-SHEET

The accused, K42340 Tpr. Ernest FEHR, 18 Cdn Armd C Regt (XII Manitoba Dragoons), a soldier of the Canadian Army Overseas, is charged with:

First Charge
Sec 15 (1)
Army Act

WHEN ON ACTIVE SERVICE ABSENTING HIMSELF WITHOUT LEAVE

in that he

in the field on 23 August 1944, absented himself without leave from his unit, 18 Cdn Armd C Regt (XII Manitoba Dragoons), from 2200 hrs on said 23 August 1944 until he surrendered himself to his unit at 1500 hrs 25 August 1944 (absent 1 day, 20 hrs)

(J A Roberts) Lt-col,
Commanding,
18 Cdn Armd C Regt
(XII Manitoba Dragoons)

In the fd
18 Sep 44

In the Field
3 Oct 44

TO BE TRIED BY FIELD GENERAL COURT MARTIAL

(A.B. Matthews) Brig
C.C.R.A. 2 Cdn Corps

FIELD GENERAL COURT-MARTIAL

CFA95 (In lieu of AFA3)
40/PAS/1697 (2nd3)

(Whether the accused to be tried is under his comd or not, a FGCM may on application to him be convened by any offr of Cdn Army Overseas, or of any other force if authorized in law, in immediate comd of troops on active service, subject to RP 105(C) and restrictions imposed by appropriate authy, AA 49, 50, RP 104-107, 114. As to the duties and privileges of the Convening Offr in dealing with the application see MML Chap V paras 20 and 23, RP 87(B).
There should be a separate Convening Order for each person to be tried separately by the same Court. RP 71(C), 109. As to separate charge sheets see RP 62, and as to separate trial on charges in the same charge sheet see RP 108. As to two or more accused charged jointly see RP 16, 109.
As to reasons for showing (a) permanent or confirmed rank, and (b) apprnt, A/rank or A/apprnt, if any, see AA 182, 183, fns. KR Can 308, 328, 330.)

ACCUSED.

Number.	(a) Prmnt R.	(b) Apprnt, A/R or A/Apprnt.	Full Christian Names.	Surname.	Unit.
K.42340	Trooper		Ernest	FEHR	18 Cdn Armd C Regt (XII Manitoba Dragoons)

CONVENING ORDER.

1. Whereas complaint has been made to me, the undersigned, that the person(s) named above as the accused, being subject to military law, has (~~xxxx~~)committed the offence(s) set forth in the Charge Sheet(s) attached and on (date) 3 Oct 44 endorsed by me, (~~or by another Offr by me~~) " To be tried by Field General Court-Martial ".

2. And whereas I am of opinion that it is not practicable that such offence(s) should be tried by an ordinary General Court-Martial ; (~~and that it is not practicable to delay the trial for reference to a superior qualified offr~~)
(Delete part in brackets when not required for compliance with RP 105(C).)

3. I hereby convene a Field General Court-Martial to try the said person(s), and to consist of the Offrs appointed or detailed hereunder.

4. ~~I am unable to appoint (a) three Offrs to form the Court, (b) a 3rd Offr as President, for the trial of the accused hereinx~~
(AA 49, RP 106(B), 107(A). Delete the whole or part, if not applicable.)

5. I also appoint as Judge-Advocate thereat the Offr mentioned hereunder.
(RP 106(E). Delete, if none appointed.)

PRESIDENT.

(Rank.)	(Must be named. RP 106.)	(Unit.)
Major	Guy Barclay	HQ RCEME 2 Cdn C Tps

MEMBERS.

(Rank.)	(Named or detailed. RP 106.)	(Unit.)
Captain	W.K. Clay	Sigs HQ 2 Cdn Corps
Lieutenant	E.F. McKnight	HQ 2 Cdn Corps

WAITING MEMBER.

(Rank.)	(Named or detailed, if any. RP 106.)	(Unit.)
	N/A	

JUDGE-ADVOCATE.

(Rank.)	(Must be named, if any. RP 106.)	(Unit.)
Captain	G.H. Jermyn	HQ 2 Cdn Corps

On Active Service in the Fd

in FRANCE (Country.)

Date 3 Oct 44

(Signed personally. RP 105 fn 2.)
(A.B. Matthews)
Brig (Rank.)
Commanding C.R.A. 2 Cdn Corps
Convening Officer.

CONVENING OFFR WILL INITIAL ALL DELETIONS AND ALTERATIONS

(See overleaf for oaths and notes for use on trial.)

78.

MED OFFRS CERTIFICATE

I certify that I have this day examined No. K42340 Tpr Fehr, E
of 18 Cdn Armd C Regt (12 D) and in my opinion he is ~~unfit~~ fit
to undergo trial by court martial.

E H Brotman

(E H Brotman) Capt RCAMC
18 Cdn Armd C Regt

Sta In the fd

Date 4 Oct 44

E-3.

One vgt led most of the way from Palacio to here. In this instance we pulled into town at dusk. It was raining hard. One of the inhabitants asked Fiche in for a drink to warm him up. Fiche told Tpr Richardson where he was going - which was about 300 yards from the harbour for the night. Tpr he shouldn't have gone but he thought he had made safe arrangements. He had a drink of Calvados which is rather potent stuff and the drink made him sleepy and he lay down on a couch. The people put a cover on him and let him sleep not knowing he was A.W.L. They woke him up next morning about 8 or 9 o'clock. He went over to the sgn harbour but we had moved off that morning. When unable to find the sgn he reported to the 4th Illin Provost but the provost-sergeant didn't recall which way he had gone. About 10.30 he met the S.A.R.'s and got a lift with them. As soon as he could he got back to the vgt.

His troop officer says he has always been satisfied with Tpr Fiche's work. He has been under arrest for 30 days and has been working day and night in the battalion. I ask the court to consider the enthusiasm with which we as the first troops were greeted. That he tried to get back as soon as he could and that he has already had quite a lot of punishment.

Yours very sincerely
J.A.

EXHIBIT A.

Summary of Evidence in the case of K42340 Tpr. Fehr, E., "B" Sqn., 18 Cdn Armd C Regt (XII MANITOBA DRAGOONS), Canadian Army Overseas, charged with Absence without leave from 23 Aug. 44 to 25 Aug. 44.

The C.O. does not direct, nor does the accused demand that the evidence be taken on oath.

First Witness:

H77224 Sgt. Judd, D. C., "B" Sqn., 18 Cdn Armd C Regt (12 D), states:

I was on the 23 of Aug. 1944 and still am Sgt. of Support Tp. "B" Sqn., 18 Cdn Armd C Regt (12 D). I am well acquainted with Tpr. Fehr, E., whom I recognize here as the accused and who for the last 10 months has been a member of my troop. At 2200 hrs. 23 Aug. 44 I saw Tpr. Fehr, E. in harbour. I went to bed soon after and in the morning was informed by his Section Comd. that he (the accused) had not slept in his tent that night and was still absent. I then reported him A.W.L. to my tp offr. I next saw him at 2100 hrs. 25 Aug. 44.

The accused declines to cross examine this witness

H77224 Sgt Judd D.C.

Second Witness:

H77309 Sgt. Crampton, W. C., "B" Sqn., 18 Cdn Armd C Regt (12 D) states:

I was on the 25 Aug. 44 and still am a sgt. of the 18 Cdn Armd C Regt (12 D). I am well acquainted with Tpr. Fehr, E., the accused and I recognize him as the accused here. On 25 Aug. 44 I was preparing to move to the sqn. area. At 1800 hrs. the accused approached me and stated he wanted transportation to sqn. He was sober and properly dressed.

The accused declines to cross examine this witness

H77309 Sgt Crampton W.C.

Third witness:

Major R. M. Mason, O.C. "B" Sqn., 18 Cdn Armd C Regt (12 D) states:

I was on the 23 Aug. 44 and still am, sqn. comd. of "B" Sqn., 18 Cdn Armd C Regt (12 D) of which sqn. Tpr. Fehr, E., is a member of the Support Tp. On this particular day the sqn was employed in recce to the left of the 4 Divisional Centre Line and its leading tps had come under enemy fire. The Support Tp. had been employed as a guard for the sqn. H.Q. At approximately 1900 hrs. the sqn. withdrew behind the forward infantry lines and moved into a harbour for the night. The tp. ldrs. were told to have their men bed down and be prepared for an early move the next day. The sqn. moved off at approx. 0800 hrs. the next morning and some time during the day of the 24 Aug. 44 I was informed by Lt. Hughes, Tp. ldr. of the Support Tp. that Tpr. Fehr, E., was absent when the tp. moved off in the morning.

The accused declines to cross examine this witness

R. M. Mason, Maj.

The accused was warned as follows:

"Do you wish to make any statement or to give evidence upon oath? You are not obliged to say anything or give evidence unless you wish to do so but whatever you say or any evidence you give will be taken down in writing and may be given in evidence."

The Accused: I have nothing to say at this time.

K-42340 Tpr. Fehr, E.

I certify that RP 4 has been complied with.

Taken by me in the fd in the presence and hearing of the accused this fifth day of Sept. 1944.

.....
(Sig. of offr. Taking Summary)

Fourth witness

H77943 Cpl. McCormick, R. D., "B" Sqn., 18 Cdn Armd C Regt (XII MANITOBA DRAGOONS) states:

I was on 23 of Aug. 44 and still am, Sec. cond. of Sp. Tp., "B" Sqn., 18 Cdn Armd C Regt (12 D) and I am well acquainted with Tpr. Fehr, E., whom I recongnize here as the accused and who for the last 18 months has been a member of my troop.

At 2215 hrs. 23 Aug. 44 I searched the harbour area to warn Tpr. Fehr, E., for guard and could not find him. I then warned the guards on duty to look out for him and the next morning he was still not in harbour. I reported his absence to Sgt. Judd at 0700 hrs. 24 Aug. 44 and we left harbour immediately afterwards. I next saw him at 2100 hrs. 25 Aug. 44.

Cpl. McCormick RD

(H77943 Cpl. McCormick, R. D.,)

12D/5-4-1

Regimental Headquarters,
18 Cdn Armd C Regt

September 18th, 1944.

K42340 Tpr Fehr, E
18 Cdn Armd C Regt

F G C M

1 Notice is hereby given that the Prosecution intends to call as evidence H77943 Cpl McCormick, R D. Abstract of evidence which will be given by this witness is attached hereto.

(E F Bastedo) Capt & Adjt
18 Cdn Armd C Regt

II

Above notice and abstract handed by me to Tpr Fehr on 18 Sep 44.

(E F Bastedo) Capt & Adjt
18 Cdn Armd C Regt

EXHIBIT B

ARMY FORM B.296 (WAR).

Statement as to Character and Particulars of Service of Accused.

(For Use at Trials by Field General Courts-Martial only).

Number.	*Rank.*	*Name.*	*Regiment (or as the case may be).*
R42340	tpr	Fehr, E	16 Cdn Armd C Regt (XXI Manitoba Dragoons)

NOTE.—The Field Conduct Sheet is to be produced in Court with this statement but is not to be annexed to the proceedings. The numbers herein stated should correspond with the number of Entries in the Field Conduct Sheet, prominence being given to the most serious offence in each entry. If the charge is for drunkenness or absence without leave, the entries for drunkenness or absence, as the case may be, should be stated separately. Any recognised special acts of gallantry or distinguished conduct recorded on the Field Conduct Sheet should also be inserted here.

1. The following is a fair and true summary of the entries in the Field Conduct Sheet of the accused, exclusive of convictions by a court martial or a civil court :—

For AWL (Sec 15(1)AA) ..... three times.

For Neglect Ac (Sec 40 AA) ..... one times.

For ..... times.

For ..... times.

Date of first entry in Field Conduct Sheet 9 Aug 42

Date of last entry in Field Conduct Sheet 14 Feb 44

2. Previous convictions of the accused by a court martial or a civil court are set out in the Schedule overleaf.

*Strike out if not applicable.

*3. The accused at the present time is under sentence for [illegible] beginning on the [illegible] day of [illegible]

4. The accused has been awaiting trial on the present charges for nil days in civil custody; and for 34 days in military custody, *i.e.*, four days in open arrest, thirty nil days in close arrest; of which nil days were spent in hospital.

5. The present age of the accused is 25 years

6. The date of his attestation is 7 Jan 42

7. The service which the accused is allowed to reckon is [illegible]

‡State the military decorations (if any) held by accused.

8. The accused is in possession of‡ C.V.S.M. & clasp

9. *(If the accused is a warrant officer or N.C.O.)* The accused has served continuously without reduction, to the present date [illegible] Date of Promotion

to the substantive rank of [illegible]

To the war substantive rank of [illegible]

To the acting rank of [illegible]

INSTRUCTION.—*If any matter in any of the above paragraphs cannot be stated from the regimental books the paragraph must be struck through.*

(21114) W1.5470/668 100,000 4/42 A.& E.W.Ltd. Gp.698
(21459) W1.2925/1571 80,000 9/42 Forms/B.296(War)/2

SCHEDULE OF CONVICTIONS BY A COURT-MARTIAL OR CIVIL COURT.

Description of Court by which tried.	Date and Place of Trial.	Charges upon which convicted.	Sentence of the Court.	Punishment remitted or sentence suspended.
		NIL		

I HEREBY CERTIFY that the foregoing particulars, which have been extracted from the regimental books in my custody, are correct to the best of my knowledge and belief.

Signed this 4th day of ~~October~~ September 1944

(E F Bastedo) Capt & Adjt
18 Cdn Armd C Regt

EXHIBIT C

No.11 District Depot

No. K42340 Name FEHR, E | Sqn, Battery, or Company | Corps | Date of enlistment 7-1-42 | GC Badges | Service or Proficiency Pay | 3/17 MFM 6 (AFB 122) 40/PAM5/136 (5413)

Date of last entry in Company Conduct Sheet | No. and date of last drunk | Period not reckoning towards freedom from extra fine | Sheet No | Signature OC Company, etc ??????????, Capt | Character

Place	Date of offence	Rank	Cases of drunkenness	OFFENCE	Names of Witnesses	Punishment awarded	Date of award or of order dispensing with trial	By whom awarded	Remarks
				Old Sheet Destroyed 7/7/42					
Camp Borden	9-8-42	Pte		AWL 0900 hrs 9-8-42 to 1300 hrs 28-9-42 Losing by neglect clothing and equipment to the amount $9.66	Documentary	28 days detn	17-10-42	T A Anderson Major	Kit Def $9.66 Apprehension $7.17 Forf 18 days pay FR&I 149 1(c) 28 days 1491(b)
Field	30Jul 43	Tpr		AWL from 2359 hrs 30 Jul 43 to 0500 hrs 1 Aug 43. Abs ent 1 day, 5 hrs, 1 min. AA Sec 15(1)	Sgt Crampton W C	7 days C B	6 Aug 43	Lt col R W Moncel	Forfeits 2 days pay FR & I
Field	17Aug 43	Tpr		AWL from 2230 hrs 17 Aug 43 to 1200 hrs 19 Aug 43. Absent 1 day 13 hrs, 30 mins	SSM W R Frend Cpl Sinclair T	10 days FP	26Aug43	Lt col RW Moncel	Forf 10 days pay FR&I 149 1(b) 2 days 149(1)(a)

(PTO)

Place	Date of offence	Rank	Cases of drunkenness	OFFENCE	Names of Witnesses	Punishment awarded	Date of award or of order dispensing with trial	By whom awarded	Remarks
Field	14Feb44	Tpr		Awarded the Cdn Vol Service Medal & Clasp w.e.f.15 Jan 44 (Pt II #5) (1) W OAS Sec 15(1) AA Absent 7 hrs 46 mins	Sgt Goodman A	Awarded forf of 10 days pay FR&I 149(2)	2Mar 44	Major P C R Black	
				(2) WOAS Sec 40 AA Neglected to properly clean his rifle	Cpl Sproule, E L Sgt Finch, E T	Forf 1 days pay FR&I 149(1)(a) Total Forf 11 days pay			

CERTIFIED TRUE COPY OF ORIGINAL DOCUMENT FROM THE REGIMENTAL BOOKS IN MY CUSTODY

[illegible]

List of Witnesses for the Prosecution and Def in the case of K42340 Tpr Fehr, E, 18 Cdn Armd C Regt (XII Manitoba Dragoons)

For the Prosecution:

1. H77224 Sgt Judd, D O
'B' Sqn 18 Cdn Armd C Regt (XII Manitoba Dragoons)

2. H77309 Sgt Crampton, W C,
'B' Sqn 18 Cdn Armd C Regt (XII Manitoba Dragoons)

3. Maj R E M Mason,
'B' Sqn 18 Cdn Armd C Regt (XII Manitoba Dragoons)

4. H77943 Cpl McCormick, R D,
'B' Sqn 18 Cdn Armd C Regt (XII Manitoba Dragoons)

For the Def:

Nil

APPX D

I desire the Convening Offr to ~~me~~detail an offr to rep me at my forthcoming trial by Field Court Martial.

I desire the services of Capt. I.L Phillips 18 Cdn Armd C Regt (12 D) if he is available.

[illegible]

K-42340 Tpr Fehr. C

H.Q.C. 55-F-858 CONFIDENTIAL

DEPARTMENT OF NATIONAL DEFENCE – OTTAWA, CANADA

SUBJECT

FIELD GENERAL COURT-MARTIAL

FEENY, JAMES WALTER D-8095

CENTRAL REGISTRY	DATE	R.A. OR H.F.	INITIALS	REFERRED TO	FOR	INITIALS	DATE
				(If purpose for which referred cannot be expressed on one line, enter here "With Minute")			2-12-46

OVERSEAS COMBINED

CONFIDENTIAL
H.Q.C. 55-F-858

NOTICE

1. Files should be retained no longer than is absolutely necessary. If a file is frequently needed at short intervals, it is better to R.F. it for two or three years than keep it out of Central Registry indefinitely. This ensures it being reviewed and kept in order, and also gives prior claim on space in Registry.

2. Files should be passed from one R.A. to another direct by messenger.

PASS THIS FILE TO REGISTRY

SCHEDULE.

PART I. PLEA(S), FINDING(S) AND SENTENCE.

Accused: D.8095 GNR JAMES WALTER FEENY 6 BN 2 CBRD.

Charge. (Insert "alternative" where applicable.)	Plea. (See Instrs p 2.)	Finding. (See note below.)	(Space for use as required for further charges, accused charged jointly, special findings, etc.)
1st	NOT GUILTY	NOT GUILTY	
~~2nd~~ ALTERNATIVE	NOT GUILTY	NOT GUILTY	
3rd			
4th			
5th			
6th			

(Note: As to findings for lesser offences see AA 56, RP 44; findings on alternative charges see MML p 483 fn 4 para 2, RP 44; special findings see RP 44 and MML p 753, and in loss of kit see RP 44 fn 6.)

At present under sentence for N/A beginning on (date) ..... (1)

(1. Insert sentence being served, or delete, if not applicable. See RP 46(A). Information should be found on MF B355 or AF B296.)

Time in confinement awaiting present trial—a total of N/A days, of which N/A days were spent in hospital.(1)

(1. See RP 46(A) fn 2. Information should be found on MF B355 or AF B296 admitted in evidence under E2.)

Sentence Awarded by the Court:

(Sgd) J.C. Campbell Maj. J.A. — 8 May 44 — (Sgd) [illegible] — President. (RP 45, 50)

Judge-Advocate, if any. — Date awarded.

(See back of Convening Order as to assembly and disposal of record after trial.)

PART II. MINUTE WHERE CONFIRMATION RESERVED. (AA 54(5), RP 120(F), MML p 760.)

Date ..... (Sgd) ..... Commanding .....

PART III. DECISION OF CONFIRMING OFFR ON FINDING(S) AND SENTENCE.

(For duties and powers see AA 54, 57, RP 37(D) fn 6, 46(A), 51-56, 120, MML pp 759-761, KR Can 567-577. Acquittals require no confirmation and cannot be revised: AA 54(3). Sending back finding or sentence for revision by Court: AA 54(2), RP 120(G). If not confirmed, accused may be tried again: AA 157, MML p 64. Minute of confirmation or non-confirmation may be altered before promulgation: RP 53, MML p 65. Quashing after promulgation: KR Can 573. Duties and powers of reviewing offrs: AA 57, 57A, RP 53A, 54. The Confirming Offr must sign here personally. AA 172 fn 1.)

My decision on the finding(s) and sentence set forth in Part I is:

I direct that the accused be not committed to prison or detention barracks until further orders.(1)

(1. AA 57A. Delete if not used.)

(Sgd) .....

Date ..... Commanding ..... Confirming Officer.

PART IV. PROMULGATED AND EXTRACTS TAKEN. (RP 53, KR Can 576, 577.)

Accused. Date. Signature of Offr.

ALL DELETIONS AND ALTERATIONS WILL BE INITIALLED.

RECORDED AT CMHQ IN AG 16 MMM-3C G-84

FIELD GENERAL COURT-MARTIAL

CPA86 (In lieu of AFA81) 40/P & D/1656 (2864)

RECEIVED 27 MAY 1944 JAG BRANCH CMHQ

Convened by Order of Brig. E.W. HALDENBY Comd 1 C.B.A. Gp dated 2 MAY 44

ACCUSED.

(As to the trial of two or more charged jointly see RP 16, 71, 109. As to reasons for showing (a) permanent or confirmed rank, and (b) appmt, A/rank or A/appmt, if any, see AA 182, 183, fn; KR Can 308, 328, 330.)

Number.	(a) Prmnt R. (b) Appmt, A/R or A/Appmt.	* Full Christian Names.	Surname.	Unit.
D8095	Gnr	JAMES WALTER	FEENY	6 Bn 2 CBRD

PROCEEDINGS REVIEWED [illegible] J.C. Smith Lieut.

REVIEWING OFFICER, JAG BRANCH CMHQ

PROCEEDINGS OF TRIAL.

Held in the Fd in (country) ITALY on (date(s)) 8 May 44

RECORD FORM A—OPENING PROCEEDINGS AND ARRAIGNMENT.

A1. The President, Members, waiting Member, JA, if any, and Offrs under instr, if any, assemble, and the Court is closed.

(PRINTED MATTER, NOT IN ITALICS FOR GUIDANCE, WILL BE DELETED, IF NOT USED OR APPLICABLE, AND INITIALLED BY PRES OR JA. The Schedule referred to throughout is on p 4. Citations do NOT include all relevant fmn ROs. For guidance on procedure when a variation in this form arises, see forms for GCM in MML pp 741 to 759. A brief record of such variation will be made and given a number having reference to appropriate or preceding para number herein. See back of Convening Order, CF A95, for oaths and instrs on how to record addresses, evidence, etc, which instrs are hereafter called "Notes". As to general provisions for conducting the trial see AA 53, RP 56, 63-70, 73, 74, 94, 103, 119, 132.)

A2. The President initials and lays before the Court the Convening Order and Charge Sheet(s) attached thereto.(1) The Court is satisfied that it is properly convened and constituted(2), accused is (are) amenable to military law, and each charge discloses an offence.(3)

(1. As to use of Summary of Evidence see RP 17 fn 6. 2. AA 49, 50, RP 105-107. 3. RP 11-13, 23, 24.)

A3. The Court is opened. The accused is (are) brought before the Court. At 1000 hours trial commences.

A4. The Prosecutor produces a Medical Certificate that accused is (are) fit to undergo trial by court-martial.(1) The Prosecutor informs the Court that accused elected to be tried by court-martial instead of being dealt with summarily by the CO.(2)

(1. KR Can 557. 2. AA 46(B), RP 60 fn 1. For effect see KR Can 563(c). Delete, if not applicable.)

A5. President to accused: Do you object to GNR. ROMANO, P.D. as interpreter? Ans No.

The Interpreter is sworn.(1) ~~Do you object to~~ as shorthand writer? Ans

~~The shorthand writer is sworn.(1)~~

(1. RP 72. Delete, if none employed.)

A6. The Convening Order and names of the President and Members of the Court are read to the accused.(1) President to accused: Do you object to be tried by me as President or by any of the Members of the Court?

Ans No Sir.(2)

(1. RP 110. 2. If no objection, waiting member retires. RP 68(B). If objection, see procedure AA 51, RP 25, 71, 187, MML p 742.)

A7. The President, Members, JA, if any, and Offrs under instr, if any, are sworn.(1) The following are the ranks, names and units of the offrs comprising the Court, etc:

President	MAJOR	D. ARCHIBALD	CIC	38 (Can Base) Regt Coy - 1 CBRD
Member	Capt.	C.T.A. GRAHAM	CAC	6 Bn 2 CBRD
Member	Lieut	L. SCOTT	CIC	28 (Can Base) Regt Coy 1 CBRD
Judge-Advocate	MAJOR	J.C.A. CAMPBELL	RCA	NET WING
Prosecutor	Lieut	D.K. WELSH		6 Bn 2 CBRD.
Defending Offr	Lieut.	R.R. BROWN		6 Bn 2 CBRD.

Questions by President: Is the Prosecutor a lawyer? Ans No. Is the Defending Offr a lawyer? Ans Yes.(2)

(1. RP 26, 27, 109, 111. List of offrs under instr will be returned separately with proceedings for information of Conv Offr.) (2. If Pros a lawyer and Def Offr not, accused is entitled to an adjournment when RP 89 (B) and fn 2 were not followed. See DI p 3.)

A8. The accused ..... before arraignment make(s) (no) (a) plea (1)

(1. If a special plea is made for separate trial on one or more charges (RP 62(E), 108), or as to the jurisdiction of the Court (RP 34, 35(A), 113), or in bar of trial (RP 36), or as to accused's mental fitness to stand trial (AA 130, RP 57), or by one of several accused charged jointly to be tried separately (RP 16, 71), such plea, the addresses made in support or against, the evidence, if any, and finding are recorded per Notes. For forms of record see references in fns to RsP cited. Insert in A8 rank and name of the accused making the plea.)

A9. The accused is (~~are~~) arraigned (~~separately~~) on all charges in the charge sheet.(1) The accused does (~~do~~) not object to any charge.(2) There is no amendment to be made to the Charge Sheet.(3) The President records the plea in Part I of the Schedule.

(1. RP 31, 112. See para 1 of Instrs p 2. When more than one Charge Sheet see RP 62; when several accused to be tried separately see RP 71(C), and see separate copies of CF A96 to record proceedings. 2. RP 32, RP 33. If otherwise, delete and make appropriate record per Notes.)

A10. The Court is closed and considers the Instrs on Procedure after Arraignment at top of p 2. The proceedings are continued on Record Form D

PRESIDENT OR JA WILL INITIAL ALL DELETIONS AND ALTERATIONS.

INSTRUCTIONS ON PROCEDURE AFTER ARRAIGNMENT.

1. *The accused may not plead or be found Guilty on more than one of two or more charges laid in the alternative (RP 37(A).) As to withdrawal of alternative charges by Prosecutor see RP 35(C). No other charge can be withdrawn for any reason without authy from Convening Offr. If Convening Offr concurs, Court may accept plea of Guilty to lesser, etc, offence. (RP 44(H).) Accused may change a plea of Not Guilty to Guilty during trial. (RP 38.) As to refusing to plead or not pleading intelligibly see RP 35(A). As to plea when sentence may be death see RP 35(D).*

2. *The proceedings on each charge sheet (RP 62) after arraignment will be conducted as follows in the respective circumstances stated :*

I. If pleas to all charges are GUILTY, use Record Form B below.

II. If pleas to all charges are NOT GUILTY, use Record Form D on p 3.

III. If pleas to some charges are GUILTY and to other charges are NOT GUILTY and,

(a) Such mixed pleas occur when there are no alternative charges in the Charge Sheet, use Record Form C below. (RP 37(A).)

(b) Such mixed pleas occur in a set of two or more charges laid in the alternative, see RP 37 (A) and fn 2 as to discretion of Court, (i) to try the accused on all such alternative charges as if he had pleaded Not Guilty thereto, or, (ii) to record the pleas as the findings of Court. After deciding between (i) and (ii), Court will proceed under foregoing instrs as may be appropriate to result of its decision. See MML p 744 Instrs (2).

3. *As to responsibility of President to accused see RP 59, 60(C); powers and duties of JA see RP 103; duty of Prosecutor see RP 60(A) (B); duty and privileges of accused and Defending Offr see RP 60(C), 87(C), 91, 92; swearing and withdrawal of witnesses from Court see RP 81, 82; questioning of accused see RP 80, 87(C), 92(B), and of witnesses see RP 83-85; calling or re-calling of witnesses by Court etc see RP 75-79, 86, 116; use of Summary of Evidence at Trial see RP 17(E) fn 6; and responsibility of JA or Pres to record proceedings see RP 94, 96.*

RECORD FORM B—PROCEEDINGS ON PLEAS OF GUILTY TO ALL CHARGES.

B1. The President or JA, if any, complies with RP 35(B) by explaining to the accused the nature and meaning of the charge(s)(1), and that on his plea of Guilty there will be no regular trial but merely a consideration of the sentence to be awarded after he has been given an opportunity to make a statement in reference to the charge(s), call witnesses as to character and make an address in mitigation of punishment.(2)
(1. RP 35 fn 3. 2. MML p 54 para 47.)

B2. President to accused : The Court will now receive any statement you desire to make in reference to the charge(s).(1) If it appears from your statement that there are circumstances which indicate that you do not understand the effect of the plea of Guilty(2), or which show provocation or extenuation in respect of which in your interest the witnesses for the Prosecution should be examined(3), we shall advise you to change your plea to Not Guilty. In making a statement you will not be sworn or subject to cross-examination ; and anything you say will not be used in evidence against you after you change your plea. However, it appears to the Court that your statement affects only the amount of punishment to which you are liable, you will not be advised to change your plea and you will be given an opportunity later to prove your statement by sworn testimony, if you so desire.(4)

President to accused : Do you wish to make a statement ? Ans.....(5)
(1. RP 37(B). 2. RP 37(D) fn 6. 3. RP 35(B) fn 5 para 3, MML p 54 para 47. 4. See para E3 of Record Form E. 5. Statement, if any, recorded per Notes.)

B3. The Court considers the accused's statement.(1) The Court decides (not) to advise accused to change his (their) plea(s) of Guilty to Not Guilty on.....charge(s). The accused is (are) so informed, and he (they) change(s) his (their) plea(s) on.....charge(s). Part I of the Schedule is amended accordingly.
(1. Court may be closed to consider the statement. Delete whole or part not used.)

B4. On the charge(s) to which the plea(s) of Guilty is (are) not changed the President records finding(s) of Guilty in Part I of the Schedule.(1)
(1. RP 35(B). If any plea(s) is (are) changed, use Record Form C or D as appropriate.)

B5. The Summary of Evidence is marked Ex....., initialled and read aloud by the President.(1)
(1. If there is no Summary, or if it is inadequate, comply with RP 37(B). If there is any evidence inconsistent with any plea standing as Guilty, Court will advise accused to change such plea and, if changed to Not Guilty, try such charge(s) by use of paras D1 to D8 inclusive of Record Form D on p 3. RP 37(D).)

B6. The accused having been found Guilty on one or more of the charges, the proceedings are concluded by using Record Form E on p 3.

RECORD FORM C—PROCEEDINGS ON MIXED PLEAS OF GUILTY AND NOT GUILTY.

C1. As to the charges on which accused pleaded NOT GUILTY the trial is continued by using paras D1 to D8 inclusive of Record Form D on p 3 before proceeding with C 2.(1)
(1. RP 37(A) (E).)

C2. The charges on which accused pleaded GUILTY are read to him (them) again, and the trial is continued by using paras B1 to B5 of Record Form B above.(1)
(1. Under B5 such parts only of the Summary of Evidence are read as relate to the charges dealt with under C2. If any plea is changed to Not Guilty, trial thereon proceeds by complying with paras D1 to D8 inclusive in Record Form D on p 3 and making an appropriate record thereof on a separate sheet.)

C3. The accused having been found Guilty on one or more of the charges, the proceedings are concluded by using Record Form E on p 3.

PRESIDENT OR JA WILL INITIAL ALL DELETIONS AND ALTERATIONS.

RECORD FORM D—PROCEEDINGS ON PLEAS OF NOT GUILTY TO ALL CHARGES.

D1. President to accused : Do you wish to apply for an adjournment on the ground that any of the rules relating to procedure before trial have not been complied with, and that you have been prejudiced thereby, or on the ground that you have not had sufficient opportunity to prepare your defence ? Ans. No Sir.(1)
(1. If "yes", see RP 39(A) for procedure. Statement or evidence, if any, is recorded per Notes.)

D2. The Prosecutor makes (an) ~~(no)~~ opening address.(1)
(1. RP 39(B), 60(A) (B), 90, 92(C) (D). Record address per Notes, subject to RP 95(C).)

D3. The evidence for the Prosecution is taken.(1)
(1. RP 39(C), 114, KR Can 555. Record evidence per Notes. As to Prosecutor giving evidence himself see RP 39(D) (E).)

D4. The Prosecution is closed.(1) The Defending Offr submits that the evidence for the Prosecution does not establish a prima facie case against the accused on ~~the~~ one charge(s).(2) The Court is closed, and considers the submission.(3) The Court is re-opened, and the President announces that the submission is disallowed on ~~the~~ one charge(s), ~~and allowed on the.....charge(s), and that, accordingly, the trial will proceed on the former, but the accused is (are) found Not Guilty on the latter charge(s).~~(4)
(1. Delete remainder of this para, if submission not made. 2. Arguments on submission, answer and reply are recorded per Notes. 3. RP 40 fn 1. See MML p 72 paras 12-14 and p 81 para 42. 4. Delete part not used. If accused acquitted on all charges, use second alternative in para D8.)
NB : If trial proceeds, accused must be allowed great latitude in making his defence, and the Court should not stop his defence solely on ground of irrelevance. (RP 60(C), 114, 115.)

D5. President to accused : You will now proceed with your defence.(1) You may, if you wish, give evidence yourself on oath as to the facts or your character or both, in which case you will be subject to cross-examination.(2) You may, however, make a statement without being sworn, and you will not be subject to cross-examination.(3) But a statement which could have been made on oath will not carry with the Court the same weight as sworn testimony.(4) You may call witnesses in your defence and as to character, whether you give evidence or make a statement or do neither.

President to accused : Do you wish to give evidence yourself as a witness, make a statement, or do neither ?
Ans. Give evidence..... Do you intend to call witnesses on your behalf ?
Ans. Two Sir. Are they witnesses as to character only ? Ans. No Sir.
(1. RP 155. 2. RP 40(A), see 80(D). 3. RP 40 fn 10. 4. RP 40 fns 2, 9.)

D6. Consequent on the answers recorded in para D5 the appropriate procedure for the defence is followed.(1)
(1. RP 114, 115, 116. For procedure see Notes on back of Convening Order, CF A95. Evidence for accused as to his character should, if in his interest, be given before the finding. See RP 46(A) fn 1, 86(C). Note the further opportunity in para E1 of Record Form E. Record per Notes addresses, statement, evidence and any summing up by the JA under RP 42, 103(e).)

D7. The Court is closed to consider the finding(s).(1) The finding(s) of the Court is (are) recorded in Part I of the Schedule.(2) The Court is re-opened.
(1. RP 43, 117(A). See Notes in Part I of Schedule. 2. RP 44(A).)

D8. ~~The President announces the finding(s), if any, of Not Guilty, and states to the accused that the finding(s) of the Court on the.....charge(s), being subject to confirmation, will be promulgated later.(1)~~
Or, The President announces that the accused is found Not Guilty on all charges and is to be released forthwith, and that the proceedings are accordingly terminated. Part I of the Schedule is dated and signed.(2)
(1. AA 54(3) (6), RP 45, 120(A). 2. AA 54(3), RP 45, 117. This alternative announcement is not applicable when there are pleas of Guilty outstanding and dealt with under Record Form B or C.)

D9. The accused having been found Guilty on one or more of the charges, the proceedings are concluded by using Record Form E below.

RECORD FORM E—PROCEEDINGS ON CONVICTION BEFORE SENTENCE.

E1. President to accused : Do you wish to give evidence yourself or to call any witnesses as to your character ?(1)
Ans.....
(1. If evidence has already been given by accused or his witnesses as to his character, delete this para. RP 37(C) fn 4, 46 fn 1. Accused and witnesses are sworn. Evidence recorded per Notes.)

E2. The Prosecutor produces Statement(s) as to Character and Particulars of Service(1), and certified true copy (copies) of Conduct Sheet(s)(2), purporting to refer to the accused, which he submits to the Defending Offr for examination, and then to the Court for admission in evidence. The Court is satisfied that these documents refer to the accused, because (i) they purport to be signed in the manner required by AA 163(1) (g) (h), and (ii) they purport to refer to (a) soldier(s) having the same number, rank, name and corps as the accused. Admitted in evidence and marked Ex..... and Ex..... respectively.(3)
(1. MFB 355 or AFB 296. 2. MFM 6. 3. RP 46, KR Can 558. If above documents not produced, see RP 46 fn 1 para 1.)

E3. President to accused : Do you wish to address the Court on the Statement(s) and Conduct Sheet(s), and in mitigation of punishment ?(1) Ans.....(2)
(1. RP 37(C), 46(D). 2. Address, if any, recorded per Notes. Court should permit accused or his witnesses to prove on oath anything here or previously stated which would affect the amount of punishment. RP 37(F) fn 7.)

E4. The President states that the Court is closed to consider the sentence, and that the sentence to be awarded by the Court, being subject to confirmation, will not be announced, but will be promulgated later, and the proceedings in open court are accordingly terminated.(1)
(1. AA 54(6), RP 120(A).)

E5. The Court considers the sentence.(1) The President records the sentence in Part I of the Schedule, which is dated and signed by him and the JA, if any.(2)
(1. When several accused tried separately see RP 7(D). One sentence only, comprised of the punishment or punishments laid down in AA 41, 44 and its proviso, is to be awarded to cover all charges in all charge sheets on which accused found guilty. RP 48. As to commences see AA 44, 138, 182, RP 46-50, 69, 118, 119(A), KR Can 309, 330, 563-566, Overseas RO 309, 2323, MML p 60, 757-759. As to sentences assigned for civil offences by the law of England see AA 41(5), MML p 130. When accused already under sentence of imprisonment or detention see AA 44(1)(b), 68(1), KR Can 564. 2. RP 50. As to release from arrest by Confirming Offr see KR Can 567. As to assembly and disposal of record after trial see Instrs on back of Convening Order.)

PRESIDENT OR JA WILL INITIAL ALL DELETIONS AND ALTERATIONS.

B 2

CHARGE SHEET

The accused, D.8095, Gnr. James Walter FERRY, R.C.A., of 6 Canadian Base Reinforcement Battalion, 2 Canadian Base Reinforcement Depot, a soldier of the Canadian Army Overseas, is charged with:

FIRST CHARGE
A.A. Sec.18(4)

WHEN ON ACTIVE SERVICE, STEALING PROPERTY BELONGING TO A PERSON SUBJECT TO MILITARY LAW,

in that he, in the Field, In Italy, on or about 8th April, 1944, stole

1 large kit bag
1 money belt
1 ration bag containing 6 bars of soap
1 shirt with torn tail
1 small kit bag
2 gym shirts
1 pair socks with a darned toe
1 pair grey socks
1 pair fatigue pants
1 grey scarf

the property of B.45238, Gnr. Rice, J.A., 6 Bn 2 CBRD, a person subject to military law.

SECOND ALTERNATIVE CHARGE
A.A. Sec.40

WHEN ON ACTIVE SERVICE, CONDUCT TO THE PREJUDICE OF GOOD ORDER AND MILITARY DISCIPLINE,

in that he, in the Field, in Italy, on or about 8th April, 1944, was improperly in possession of the articles enumerated in the first charge, the property of B.45238, Gnr. Rice, J.A., 6 Bn 2 CBRD, a person subject to military law.

26 Apr 44.

(L.W.H. Randell) Major,
A/O.C.,
6 Cdn Base Rft Bn - 2 CBRD

Approved for trial under K.R.(Can.) 540

R.B. Batt Capt.
ADJA HQ 1 Cdn Corps.

TO BE TRIED BY FIELD GENERAL COURT MARTIAL

2 May 44

(E. W. Haldenby) Brigadier
Commander
1 Cdn Base Rft Group
Cdn Army - C M F

ORDER

Whereas by Order, dated 2 May 44, I detailed Capt W.B. Bate, HQ 1 CBRGp, as Judge Advocate of a Court for the purpose of trying by Field General Court Martial D-8095 Gnr Feeny J.W. 6 Bn - 2 CBRD;

And whereas it appears that the said Capt W.B. Bate is not available to sit as Judge Advocate of the said Court;

Now therefore, I do hereby detail Major J.C.A. Campbell, 8 Bn (NET WING) 1 CBRGp to be Judge Advocate of the said Court and sit in place and stead of the said Captain W.B. Bate, and the said order, dated 2 May 44 is hereby amended to read accordingly.

Signed this 8th day of May 1944.

E.W. Haldenby

(E.W. Haldenby) Brigadier
Commander,
1 Cdn Base Rft Group
Cdn Army - C M F

Thanks C.O.

J.C.A. Campbell Major
Judge Advocate

FIELD GENERAL COURT-MARTIAL

CFA95 (1/45) (CAFAD)
40/1553/1697 (2983)

(Whether the accused to be tried is under his comd or not, a FGCM may on application to him be convened by any offr of Cdn Army Overseas, or of any other force if authorized in law, in immediate comd of troops on active service, subject to RP 105(C) and restrictions imposed by appropriate authy. AA 49, 50, RP 104-107, 114. As to the duties and privileges of the Convening Offr in connection with the application see MML Chap V paras 20 and 23, RP 87(B).

There should be a separate Convening Order for each person to be tried separately by the same Court. RP 71(C), 109. As to separate charge sheets see RP 62, and as to separate trial on charges in the same charge sheet see RP 108. As to two or more accused charged jointly see RP 16, 109. As to reasons for showing (a) permanent or confirmed rank, and (b) appmt, A/rank or A/appmt, if any, see AA 182, 183, fns, KR Can 308, 328, 330.)

ACCUSED.

Number.	(a) Prmnt R.	(b) Appmt, A/R or A/Appmt.	Full Christian Names.	Surname.	Unit.
D-8095	Gnr		James Walter	FEENY	6 Bn 2 CBRD

CONVENING ORDER.

1. Whereas complaint has been made to me, the undersigned, that the person(s) named above as the accused, being subject to military law, ~~has~~ (have) committed the offence(s) set forth in the Charge Sheet(s) attached and on (*date*) 2 May 44 endorsed by me, ~~(or by an offr of my staff for me)~~, "To be tried by Field General Court-Martial".

2. And whereas I am of opinion that it is not practicable that such offence(s) should be tried by an ordinary General Court-Martial; ~~(and that it is not practicable to delay the trial for reference to a superior qualified offr.)~~
(*Delete part in brackets when not required for compliance with RP 105(C).*)

3. I hereby convene a Field General Court-Martial to try the said person(s), and to consist of the Offrs appointed or detailed hereunder.

~~4. I am unable to appoint (a) three Offrs to form the Court, (b) a Fd Offr as President, for the reasons I have attached hereto.~~
(*AA 49, RP 106(B), 107(A). Delete the whole or part, if not applicable.*)

5. I also appoint as Judge-Advocate thereat the Offr mentioned hereunder.
(*RP 106(E). Delete, if none appointed.*)

PRESIDENT.

Major (*Rank.*)	D. ARCHIBALD (*Must be named. RP 106.*)	CIC	38 Cdn Base Rft Coy - 1 CBRGp (*Unit.*)

MEMBERS.

Capt	G.F.A. CHAPAIS	CAC	6 Bn 2 CBRD
Lieut (*Rank.*)	L. SCOTT (*Named or detailed. RP 106.*)	CIC	38 Cdn Base Rft Coy - 1 CBRGp (*Unit.*)

WAITING MEMBER.

Capt or Lt (*Rank.*)	To be detailed by OC 5 Bn 2 CBRD (*Named or detailed, if any. RP 106.*)	(*Unit.*)

JUDGE-ADVOCATE.

Capt (*Rank.*)	W.B. BATE ADJA (*Must be named, if any. RP 106.*)	HQ 1 CBRGp (*Unit.*)

On Active Service in the Fd

in Italy (*Country.*)

Date 2 May 44

(E. W. Haldenby) (*Signed personally. RP 105 fn 2.*)

Commanding 1 Cdn Base Rft Group Convening Officer.

Brigadier (*Rank.*)

CONVENING OFFR WILL INITIAL ALL DELETIONS AND ALTERATIONS

(*See overleaf for oaths and notes for use on trial.*)

Opening Address by Pros.

The charge in question is stealing property belonging to a person subject to Military law. The prosecution will produce witnesses who will identify the property in question as that having recovered from the house of an Italian. The owner of the property will identify it as his and will also support it by three other witnesses who will give evidence that said property was at one time out of his possession, and finally a witness to give evidence that he saw the accused in possession of the above mentioned property, and a witness who will identify it having recovered the property from the accused and who will identify the accused.

First Witness for Pros.

B45238 Sm Rlg J.H. 63 Bn 2 CBRD duly sworn states -

I returned from No 2 Con Con Depot after being in the hospital on April 8th and my kit was underneath the bed of Sm Morton and Sm Moffat. It appeared to be in good condition. Sunday afternoon April 9th I was out walking with Sm Morton and Sm Moffat when I met Sm Cuthbertson at about two o'clock (1400 hrs) he asked me whether I had lost a money belt but I told him No, for as to my knowledge it was still safely in my kit bag. Later on I promised to drop around to the R.A.P. to identify it, as it was supposed to have a 'B' number and 'Rlg' on it. At 1600 hrs when I returned to Barracks my kit bag was missing. At 2030 hrs I reported the to the Provost in the town of Ateipalda. On Monday the 10th I asked for permission from

S. Mc Dowell To proceed to the Parcel Office in order that I might identify some kit. ~~etc~~

At the Parcel Office I identified a number of articles exhibited before me. I identify the money belt now produced as being mine by reason of my name and number being marked on it in gold letters.

(Money belt marked exhibit A.)

I identify ration bag containing six cakes of soap as being mine by reason of my number on it

(Ration bag & six bars of soap exhibit B)

I identify the shirt as being mine by reason of the torn tail.

(Shirt with torn tail Exhibit C)

I identify the small kit bag as mine by reason of my name & number on it.

(Kit bag Exhibit D)

I identify these two gym shirts as mine by reason of my name & number on one. The other was with the marked one when they were washed

(Gym shirts Exhibit E.)

I identify one pair of woollen sox owned to a different coloured wool darn in the toe.

(Wool sox Exhibit F)

I cannot identify the grey sox positively they are similar to the ones I owned.

(Sox marked exhibit G)

I identify grey scarf produced, by reason of the red cross label in one corner.

(Grey scarf Exhibit H)

I cannot the grey fatigue pants as mine. They are similar to ones I had.

(Grey fatigue pants Exhibit I)

I identify kit bag by reason of my name on it,

(Kit bag marked exhibit J)

Cross examined.

I know the accused.
I cannot identify fatigue pants (exhibit I)
I cannot identify the grey sox (exhibit G)
The only identification for grey scarf is the Canadian red cross ~~sign~~ marks. (Exhibit H)

(R.P. 83b complied with)

Second Witness. B45125 Gnr. Martin J. 6 Bty 2 C.A.A.D.
duly sworn states:-

I was stationed at the Sik Barracks when Gnr Rice returned from hospital on Feb 8th April 8.
I turned over his kit to him. He appeared to be quite satisfied that everything was in good order. At apprx 2000 hrs I was talking to Gnr Rice when I saw Gnr Feeny come out of the Barracks carrying a kit bag. I identify the accused.

Cross examined.

I was apprx fifty a sixty feet away from Gnr Feeny when he came out of the building.
It wasn't dark at that time.
I could not identify the kit bag the accused was carrying.
I could not say whether the accused was alone at the time.
The accused also had a blanket under his arm and the kit bag over his shoulder.
No re-examination.
No questions by the court.

(R.P. 83b complied with)

gsc

Third Witness. C48776 Gnr Moffatt L.R. 6 Bn 2 CDAD.
Duly sworn states:-
On April 8/19 I was in Leb Barracks Aldershot when Gnr Rice returned from hospital. He had his kit in our care. I identify Exhibit "D", "J", "B", "H", "A".
When Gnr Rice went to get his kit bag, later, under beds it was gone. On about April 16th I went with Gnr Rice to the Provost & identify his kit. At the Provost office there was a lot of clothing including the exhibits I referred to above.
No Cross Examination.
By The Court.
I have known Gnr Rice through Canada, and England. I saw him wearing the scarf and money belt in both places. I know his kit because Gnr Morton and I took care of it when he went into the hospital. Some blankets disappeared and we put Rice's kit under our beds.
(Rule 936 complied with)

Court adjourned at 1200 hrs.
Court reopens at 1330 hrs same members present.

Fourth Witness. D11067 Gnr. Cuthbertson J.A. 6 Bn 2 CDAD.
Duly sworn states:-
On Saturday evening April 8 I was on duty in the Orderly Room no. 6 Bn. and Gnr Young came in who had been working there. I identify him now. He had in his possession a money belt. I asked him where he got it. He told that he had bought it in a pub for 150 Lire. I identify Exhibit A. as the money belt.

After trying on the belt he found it was too large for him. He handed it to me & told me that I could have it if I wanted it. I noticed that the name on the belt was a chap I knew, so I put the belt in the drawer of my desk. The next day I met Gnr Rice and asked him if he had lost a money belt. He told me that he didn't know if he had lost one but had had one in his bag. So I asked him his number. I asked him to come around & have a look at it, which he did shortly after. He identified the belt as his own and asked me to keep it. I kept it until I went up to the Office when the case was brought up and gave it in there.

Cross Examined

The accused was not surprised that there was a name on the belt and said he only bought it when he had the chance.

The accused had been drinking at that time but was not drunk.

The question did not phase him.

~~If he did not act like a gentleman~~

No re Examination.

No Questions by the Court

By J.A.

It was the 8th of April when Gnr Fenn offered to let me have the money belt (Exhibit A).

(R.P. 836 completed)

goc

VI

Fifth Witness. C41324 Cpl Irvine R.D. 1 C of C Provost Coy.

Duly Sworn states:-

On the night of April 8 1944. (Sgt. H.) I was requested to search an Italian home which we did and found an U.S army blanket and numerous other clothing. As there was also a lot of washing in the house we seized all the army clothing we could find. Among the articles was an army vest bag with the top cut off. I identify exhibit H which is the vest bag because it was cut at the top. I made no note of any markings on the bags. All the articles were taken to our office and held there. About two days later Sgt Ria came into the Provost office and identified exhibits A to H. as his.

Cross Examined

There was six or seven different soldiers clothing beside the exhibits on the head.

It was about 2145 hrs on the 8th of April the search was made.

No Re examination

By the Court.

I was accompanied by CSM Doull on the search

(RP 83b Complied with)

Prosecution does not call
CSM Doull H.E.
Defence does not ask this witness to called

JAC

VII

Sixth Witness Rotando Nicola. (Civilian) 57 Y/O Montreal, P.Q.

Duly Sworn states.

On Saturday night April the 8th at about 11 P.M. 1950 another friend + I were sitting at the table eating and then we left at 12 hours. The accused and another soldier were with me. The accused came back about 2000 hrs with a bag under his arm. which I identify as Exhibit B. In the bag there were a singlets, a couple of undershirts, coveralls, a pr of pants, socks, a small sweater, an old sack, a face cloth, some pair (3 or 4) of light socks, some underwear.

I identify Exhibits B. D. R. I. H. E. C. and cannot definately identify socks but there were 3 or 4 pair. And also exhibit J. as the bag in which all exhibits were in All of which the Police came + took late.

Cross Examined.

The police came to my house saturday before Easter. I was confused at the summary of evidence and gave the wrong day.

I identify the scarf because the accused dropped it on the floor & when taking it out of the bag and going over each article piece by piece.

There was no laundry belonging to any other soldier in my house that night.

The police came and took several other soldiers laundry from my house beside the accused.

There were no other socks there belonging to any other soldier in my house.

The money belt was also in the sack.

No re examination.

No questions by the Court.

JMC

Defence moves for dismissal of charges on grounds that no prima facie case has been established by the prosecution. for:—

(a) loss of pet lay proven by Mrs Rice.
(b) loss corroborated by Martin. At about 2000 hrs he had seen the accused with a pet lag.
(c) Third Witness Mrs Moffatt substantiated loss of pet lag.
(D) Fourth Witness Mrs Cuthbertson states the accused gave him a money belt that he stated he had bought ~~based on evidence~~
(E) The Fifth Witness Cpl Irvine states he picked up a pet lag at Carlisle home.
(F) The Sixth Witness the Carlisle Rotondo states that the accused brought a pet lag to his house and proceeds to identify everything produced by the prosecution including a money belt which the fourth Witness Mrs Cuthbertson then had in his possession.

The charge of theft is not substantiated by any of the evidence brought out by the prosecution. The alternative charge of unlawful possession is based on the entirety on the evidence of the civilian Rolando and is not substantial enough to uphold this charge.

With reference to chapter 6 of M.M.L. pp 73 sec 13. It is the contention of the defence that the onus of proof has ~~not been established~~ remains with the prosecution and the case has not been established.

Prosecution in rebuttal - Witnesses for pros. have identified property in question. They have testified to having seen the accused with the property. One witness Mrs Cuthbertson say accused sold money belt which is property of Mrs Rice. The Italian witness has

identified the accused as the same person who brought Ex. #J. to his house & the kit bag & contents have been identified as being those of Pte Rees. In addition Pte Martin states accused was seen leaving the blks with a kit bag on the same day as the kit bag was missed by Pte. Rees. Prosecution submits that the evidence ties in with the day on which kit bag missed & the same day the accused having been seen leaving the blks with a kit bag & with the accused having been identified as the party who had the kit bag in question in his possession. Circumstantial evidence produced is strong enough to remove any possible reasonable doubt existing in the mind of the Court & sufficient to put accused on their defence

The Court is cleared to considers motion by defence.
The Court reopens & advises accused motion is disallowed.

The J.A advises accused of his rights under RP 40 (2) 2.

The accused elects to give evidence under oath.

The accused D 5085 Pte James Walter Peary R.C.A. 6 Fd. Coy. C.E. R.C.E. being duly sworn is examined by the defending officer

On 8 Apl 44 I had the afternoon & evening off. After I left pick bag I went downtown & got. This was about 1900 hrs. By the time I met a Lt Major of "A" Coy (Lt Major Barker) also Pte. Peary. We started drinking. About 1700 or 1730 hrs a guy approached me & asked me if I would like to buy a belt. I asked him what kind it was & he said a money belt. The belt is Ex. #A. I asked Lt Major

for loan of 150 lires for belt. We stayed in pub till closing time, 1930 hrs. From there I went back & hbs & got my kit together for a move. I took me blanket, from U.S. pattern belonging to Gnr. Mallock. I took blanket & my kit bag & went to Italian's house, Italian witness in this case. I had a couple of bottles of wine at this house. Left a battledress (Gnr. Geary's) at this house, also one U.S blanket, some winter underwear 2 sets of tops & drawers & 2 prs. summer shorts also two prs. socks for washing. It was about 1935 hrs when I left to go back to R.A.P. arriving about 2000 hrs. In RAP I turned over money belt (Gp A) over to Gnr Cuthbertson. I told him he could keep it. He asked me where I got it. I told him I had bought it for 150 lires.

Cross-Exam - Nil

By the Court - Had about 2 glasses of rhum while in the pub. Gnr. Cuthbertson is a friend of mine. I don't know the Gnr. who sold me the belt. Gnr. Rice came over on the boat with me. I didn't examine the belt when I bought it - it was folded up & I put it in my pocket. When I was at Lido I took my laundry to the Italian witness. I took laundry down to Italian's in my own kit bag.

By J.A. - There was other clothing on the floor of the Italian house when I took my laundry in, including couple of Coveralls, couple of uniforms - I didn't own a scarf. I borrowed 5 Rds lire from the Sgt Major.

RP 83(2) Complied with.

Defence advises Sgt Major Mosher now returned to Canada & Gnr. Geary evacuated to 1st Can Gen Hosp & not available.

Summing up by Prosecutor:

KE Prosecution maintains all the pts were covered in

the rebuttal made on the motion for dismissal I wish to reiterate these points at this time. There is nothing further I wish to add.

Summing up by defence. The accused is charged under S.A.A. 8(c). I refer to Sec 37. Ch. 3. M.M.L 23, reads. Defence contends Sec 37 applies in this case. Refer also to M.M.L 118 defining theft - reads. I submit no intent, no carrying away or taking has been proven by the prosecution. Evidence has been produced that a kit bag was lost & that it was found by Provost in an Italian's house. But no identification to connect the accused & contents of kit bag has been produced by the Italian. The Italian contradicts himself and says money bill among the articles bought in by accused. I submit Italians evidence not credible. This throws out the only tie up between accused & the kit bag. Accused has made a straight forward story & it is now a question of believing the accused's evidence or that of the Italian. If the Court can find in their own minds that there is any doubt regarding the guilt of the accused then the accused must be given the benefit & found not guilty on both charges.

J.K.C.

O Summing up by S.A.

As I said it is my duty to sum up the evidence for the benefit of the court and to advise the court on the law in so far as it relates to the case. I must not express my opinion and if I should do so you will disregard it and form your own from the evidence you have heard today.

Dealing first with the law I would refer you again to M.M. p 117 which defines theft. The evidence in the case shows the accused went into an Italians house with a kit bag. The Italian witness states the kit bag is his and he identifies it exhibit 'J.' and then proceeds to identify the other exhibits including exhibit 'A' as having been taken from the kit bag. The accused states the kit bag is not exhibit 'J' but was one he belonging to himself. It is for the court to decide which of these witnesses they believe. If the court believe the Prosecution, then is there further evidence to show the accused took away by fraud without colour of right, with intent to deprive the owner permanently of the exhibits now in court? The intent can only be shown by circumstantial evidence and I ask the Court to consider if there is such evidence here. It is my duty to tell the court, if they are satisfied certain of the articles were stolen, as set out in the charge, they may bring in a special finding and the accused be guilty of stealing those articles. In so far as the unlawful possession charge is concerned. I ask the court to consider whether the Prosecution has shown the accused had these articles improperly.

Fifth Witness. 6

or is the evidence sufficient for the court to use its military knowledge and say the accused was improperly in possession of the article. On the one hand is the story told by the accused under oath & reasonable and if it is and as such raised a reasonable doubt in your minds, then the accused is entitled to the benefit of that doubt and should be acquitted of the charges.

In conclusion I will define for you what is reasonable doubt. Reads:-

The Court orders the exhibits returned to the Prosecution.

J&C

SUMMARY OF EVIDENCE

In the case of D.80?5, Gnr. FERRY, J.W., RCA, a soldier of the Canadian Army, on strength of 6 Canadian Base Reinforcement Battalion, 2 C.B.R.D., Canadian Army Overseas.

By direction of the Commanding Officer, this Summary of Evidence is taken under oath.

FIRST WITNESS

B.45238, Gnr. Rice, J.A., 6 Bn 2 CBRD, having been duly sworn, states:

I am B.45238, Gnr. Rice, J.A., on strength of 6 Bn 2 CBRD. Around February 11th, I was evacuated to the Sick Bay where I stayed for 12 days. Expecting to return to my barracks within a day or two, I had left my entire kit on my bed. While in Sick Bay, I suffered an attack of jaundice and was transferred to the 3rd General Hospital. From there I went to the Convalescent Camp, from which I returned on Saturday, April the 8th, 1944, at about 1400 hrs. On my arrival, I noticed my entire kit under Gnr. Moffatt's and Gnr Martin's beds. It appeared to be in perfect order. On Sunday afternoon, at about 1430 hrs, Gnr. Cuthbertson asked me if I had lost a money belt, for he had one with a "Rice" name on it and also a "B" Regimental number. Thinking my money belt was still in my kitbag, I told him that I had not lost it, but promised to have a look at it the following morning, just to make sure. On returning to camp at about 1630 hrs, I noticed that my kitbag was missing. After dinner, I contacted Gnr. Cuthbertson and told him that my kitbag was missing. I then reported to the Provost who were patrolling the streets. It was then about 2000 hrs. I was asked by them to come down in the morning to identify some clothes that had been picked up in some raid on a civilian house. I tried unsuccessfully to see the Provost corporal on Monday afternoon, but finally managed to see him on Tuesday by 1100 hrs. I identified various items as belonging to me, among which were one towel, two gym shirts, and some pairs of socks, also a ration bag and six cakes of soap. There was also a smaller kitbag that bore my name and number. I took everything that I could identify. I then reported to CSM Doull Tuesday afternoon, April 11th, 1944, and arranged to lay a charge against the accused. (Exhibits "A" and "B" are shown). I identify this kitbag as mine, also this ration bag, as my regimental number is on it. Also the money belt." I recognize this one shirt as mine by the torn spot on the tail. The small kitbag has my regimental number on it. The gym shirts are definitely mine. I know by the brown spots under the sleeves, as I wore a brown sweater for quite some time. One pair of socks is definitely mine, as I darned the toe of one sock with some wool of a different shade. Also a pair of grey socks. My number is on the pair of fatigue pants, and this grey scarf is also mine. As for the rest of the kit, I am not positive that it is mine, but it looks very similar to some of the clothing that I had in my kitbag.

(Signed) Jack Rice

The accused declines to cross-examine the witness.

SECOND WITNESS B.45125, Gnr. Martin, J., 6 Bn 2 CBRD, having been duly sworn, states:

I am B.45125, Gnr. Martin, J., 6 Bn 2 CBRD. Somewhere around the middle of February, Gnr. Rice, J.A., was taken to the Sick Bay. On his request, Gnr. Moffatt L.R., and myself undertook to keep an eye on his kit which was piled upon his bed. However, as both Gnr. Moffatt and myself are employed at the Postal Tracing Unit, we were away quite a bit, mostly between 12 o'clock at night and 0800 hrs in the morning. A short time later, possibly a week or so, on coming in one morning, I found one blanket missing from Gnr. Rice's kit. The following morning, I found another blanket missing, also from Gnr. Rice's kit. I decided with Gnr. Moffatt to see the quartermaster about his taking charge of the kit. We both saw him about it. Nothing was done, so after a few days we moved all his kit under our two beds, which are adjoining. On Saturday April the 8th, 1944, I saw Gnr. Rice again at about 1400 hrs. I told him about the two blankets that had disappeared. He then checked the rest of the kit, and seemed to think that everything was in order. Later on in the evening, I was standing with Gnr. Rice by the drinking water barrel next to the Silo Kitchen at the Silo Barracks, in Atripalda. I was facing the Silo Barracks and Gnr. Rice had his back to them. I saw Gnr. Feeny, the accused, come out of the building with a kitbag over his shoulder and a blanket under his arm.

Question by the accused: When I left the Silo Barracks, was I alone or with somebody?
Answer: I Couldn't say. There were a few chaps milling around and I could not say whether they were with you or not.

(Signed) J Martin

THIRD WITNESS C.48776, Gnr. Moffatt, L.R., 6 Bn 2 CBRD, having been duly sworn, states:

I am C.48776 Gnr. Moffatt, L.R., 6 Bn 2 CBRD. Sometime in the middle of February, Gnr. Rice, J.A., was taken to Sick Bay. After a short time, having found out that Gnr. Rice, J.A., was in hospital, both Gnr. Martin and myself saw the Quartermaster about Rice's kit. Nothing was done, and beds being scarce, we put Gnr. Rice's kit under our own bed. On Saturday, April 8th, 1944, on Gnr. Rice's return to camp, I told him about his kit being held by us. He looked at his kit and seemed to think it was complete. Sometime later, one morning, I accompanied Gnr. Rice, J.A., to the Provost office where he identified some of his belongings, among which were a two-piece fatigue uniform, a towel with his number on it, a summer shirt, and a certain number of pairs of socks, a scarf, and a ration beg with 6 bars of soap. We went back to the barracks, and Gnr. Rice took the kitbag with him down to his bed.

Q.1 - Did Gnr. Rice examine his complete kit on his return to camp?
A.1 - He took his two kitbags and his large pack from under the bed, but to my knowledge, did not open either.

(Signed) L R Moffatt

FOURTH WITNESS

D.11067, Gnr. J.A. Cuthbertson, 6 Bn 2 CBRD, having been duly sworn, states:

I am D.11067, Gnr. Cuthbertson, J.A., on strength of 6 Bn 2 CBRD. On the evening of Saturday, April the 8th, 1944, Gnr. Feeny, who had been working with me in the R.A.P., came in to the R.A.P., which he had been using as his quarters. He had been drinking and had in his possession a money belt. I asked him where he had got it, and he replied that he had bought it in a pub and had paid 150 lire for it. He tried it on and found it to be too large. He handed it over to me and said I could have it if I wanted. I noticed the name on the belt as I tried it on, and mentioned this fact to the accused. He replied that he did not know who it belonged to, but having had a chance to buy it, he had done so. I then put the belt in the drawer. On Sunday morning, the following day, through a friend of mine who saw the belt, I found out the chap whose name was on the belt was Gnr. Rice. On that same afternoon, I met this Gnr. Rice and asked him if he had lost a money belt. I thought at that time that the regimental number on the money belt was about the same as the one that Gnr. Rice gave me. I then arranged for Gnr. Rice to identify the belt, and told him he could have it if it were his. Some time later, I can't exactly say when, Gnr. Rice came over to the R.A.P. and identified it as his. Acting on Gnr. Rice's instructions, I kept the belt until I was called to produce it in the orderly room of "E" Company, where I handed it in. (The belt is produced). I identify this belt as being the one which was given to me by Gnr. Feeny. (The belt is kept as Exhibit "B").

(Signed) J. A. Cuthbertson

The accused declines to cross-examine the witness.

FIFTH WITNESS

C.22406, C.S.M. Doull, H.E., 6 Bn 2 CBRD, having been duly sworn, states:

I am C.22406, C.S.M. Doull, H.E., 6 Bn 2 CBRD. On the afternoon of the 8th of April, 1944, at approximately 1330 hrs, I was approached by Gnr. Rice, J.A., who wanted to know how he could lay a charge against Gnr. Feeny. I was very busy at the time, but at about 1500 hrs I got around to investigate the affair. Upon information received, I prepared the charge against the accused for Gnr. Rice and placed the accused under close arrest.

(Signed) H.E. Doull C.S.M.

The accused declines to cross-examine the witness.

SIXTH WITNESS

C.41324, Cpl. Irvine, R.D., No1 L of C Provost Coy, Atripalda detachment, having been duly sworn, states:

I am C.41324, Cpl. Irvine, R.D., No.1 L of C Provost Coy, and I am in charge of the Atripalda Provost Detachment. On the night of April the 8th, acting on CSM Doull's suggestion, I investigated the house of NICOLO NOTUNDI, which had been under suspicion for some time. I found an American blanket and numerous other Army clothing at the head of the bed. I also found a kitbag, the top of which had been cut off. It was empty. There were markings on it, but I did not notice any name at that time. I brought

(Cont'd)

SIXTH WITNESS (Cont'd).

everything back to the Guard Room where I kept it in my quarters. Two days later, Gnr. Rice came up and claimed to have lost a kitbag and some clothing. I asked him to identify the items. He wrote a list out. He identified the kitbag and some other items and brought them to his quarters. (Exhibit "A" is produced). I identify this kitbag as being the one that I took from Nicolo Rotundi's house. As for the other items as brought out, I identify them as being in all ways similar to that which I found in Nicolo Rotundi's house, but I am not prepared to swear that they are the same. This kitbag includes one smaller kitbag, a ration bag with six cakes of soap, coveralls, one shirt, and other items of personal clothing. (The money belt is brought up as Exhibit "B"). I do not identify the money belt, and have never seen it before.

Question by the accused: At what time were you approached by CSM Doull to search Nicolo Rotundi's house?

Ans: Approximately 2045 hrs, Saturday, 8th April, 1944.

Q.2 - What time was it when you raided the house?
A.2 - About one hour later, or about 2145 hrs.

(Signed) [signature]

At this time, R.21846, Gnr. Romano, P.D., 6 Bn 2 CHWD, is duly sworn in as interpreter.

Question to the accused: - Do you object to Gnr. Romano acting as interpreter for the evidence about to be given?
Answer: - No.

SEVENTH WITNESS

ROTONDI NICOLA, civilian, of No.57 Via Manfredi, Atripalda, having been duly sworn, states:

I am Rotondi Nicola, and I live at 57 Via Manfredi, in Atripalda. I recognize the accused as he has been to my house on several occasions, and also last Saturday, April 8th, 1944, he came at about half-past seven. He drank some wine and left. (The Exhibit "A" is brought up). I recognize this kitbag as the one which the accused brought up to my house around 1900 or 1930 hrs this last Saturday, April 8th, 1944. The accused stated that that was his laundry. The kitbag was already cut open and he left the kitbag with me to be returned to him after the washing had been done. Some of the washing was done and some was not. (The contents of the kitbag are brought out). I recognize all of this laundry as being part of what was brought in by the accused, with the exception of a towel and the money belt. I recognize specifically the pair of coveralls and the bag with 6 cakes of soap. The Canadian police came in Sunday at about 2300 hrs and took all this kitbag full of clothing away. This is the last I have seen of these articles of clothing between then and now.

Question by officer taking summary: -Was it on Sunday night that the Canadian police raided your house?
Answer: - Yes, it was on Sunday night that they raided my house.

(Signed) [signature]

The accused declines to cross-examine the witness.

Question to the accused: Do you wish to make any statement or to give any evidence on oath? You are not obliged to say anything or give evidence unless you wish to do so, but whatever you say or any evidence you give will be taken down in writing and may be given in evidence.

The accused declines to make a statement and reserves his defence.

Exhibits "[redacted]" are sealed and are placed in the custody of 6 Bn Orderly Room for safe keeping.

I hereby certify that the above Summary of Evidence, consisting of five (5) pages, was taken before me in the presence of the accused and the Rules of Procedure 4(c), (d), (e), and (f) have been complied with.

(Signed) Marc Forget Lieut

(M.P. Forget) Lieut. RCA,
Officer detailed to take
Summary of Evidence.

26 Apr 44

LIST OF WITNESSES

D.4523 8	Gnr. Rice, J.A.	-	6 Fd R CRTD.
D.45125	Gnr. Martin, J.	-	"
C.48776	Gnr. Moffatt, L.H.	-	"
D.12067	Gnr. Cuthbertson J.A.	-	"
C.22406	CSM Doull, H.E.	-	"
C.41324	Cpl. Irvine, E.D.	-	No.1 Cdn L of C Provost Coy
ROTONDO NICOLA	(civilian)	-	57 Via Manfredi, Atripalda, Italy.

LIST OF EXHIBITS

Exhibit "A" - Kitbag.
" "B" - Money Belt.
" "C" - Ration Bag.
" "D" - Shirt.
" "E" - Small Kit Bag.
" "F" - Gym Shirts. (2)
" "G" - Pair of socks (darned).
" "H" - Pair of grey socks.
" "I" - Fatigue pants.
" "J" - Grey Scarf.

I, No. D.8095, Gnr. James Walter FEETY, request that my Commanding Officer appoint Lt. R.R Brown to defend me at my forthcoming Field General Court-Martial.

28 Apr 44 (Signed) J. W. Feety
(James Walter FEETY) Gnr

H.Q.C. 55-F-859 CONFIDENTIAL

DEPARTMENT OF NATIONAL DEFENCE — OTTAWA, CANADA

SUBJECT

FIELD GENERAL COURT-MARTIAL

FEELEY, EDWARD THOMAS C-309[illegible]

CENTRAL REGISTRY	DATE	C.A. OR B.F.	INITIALS	REFERRED TO	FOR [illegible]	INITIALS	DATE
				(If purpose for which returned record be [illegible] enter here "With Minute")			2-12-46

CONFIDENTIAL
H.Q.C. 55-F-859

OVERSEAS COMBINED

NOTICE

SCHEDULE.

PART I. PLEA(S), FINDING(S) AND SENTENCE.

Accused: C. 30958 Pte Edward Thomas FEENEY.

Charge. (Insert "alternative" where applicable.)	Plea. (See Instrs p 2.)	Finding. (See note below.)	(Space for use as required for further charges, accused charged jointly, special findings, etc.)
1st Charge	Guilty	Guilty	
2nd			
3rd			
4th			
5th			
6th			

(Note: As to findings for lesser offences see AA 56, RP 44; findings on alternative charges see MML p 483 fn 4 para 2, RP 44; special findings see RP 44 and MML p 753, and in loss of kit see RP 44 fn 6.)

~~At present under sentence for~~ ~~beginning on (date)~~ (1)

(1. Insert sentence being served, or delete, if not applicable. See RP 46(A). Information should be found on MF B355 or AF B296.)

Time in confinement awaiting present trial—a total of 20 days, of which Nil days were spent in hospital.(1)

(1. See RP 46(A) fn 2. Information should be found on MF B355 or AF B296 admitted in evidence under E2.)

Sentence Awarded by the Court:

To undergo detention for a period of one hundred and twenty days.

(Sgd) ..... Judge-Advocate, if any. 21 July 44 Date awarded. (Sgd) A.L. MacInnes Major President. (RP 45, 50.)

(See back of Convening Order as to assembly and disposal of record after trial.)

PART II. MINUTE WHERE CONFIRMATION RESERVED. (AA 54(5), RP 120(F), MML p 760.)

Date ..... (Sgd) ..... Commanding .....

PART III. DECISION OF CONFIRMING OFFR ON FINDING(S) AND SENTENCE.

(For duties and powers see AA 54, 57, RP 37(D) fn 6, 46(A), 51-56, 120, MML pp 759-761, KR Can 567-577. Acquittals require no confirmation and cannot be revised: AA 54(3). Sending back finding or sentence for revision by Court: AA 54(2), RP 120(G). If not confirmed, accused may be tried again: AA 157, MML p 64. Minute of confirmation or non-confirmation may be altered before promulgation: RP 53, MML p 65. Quashing after promulgation: KR Can 573. Duties and powers of reviewing offrs: AA 57, 57A, RP 53A, 54. The Confirming Offr must sign here personally. AA 172 fn 1.)

My decision on the finding(s) and sentence set forth in Part I is:

Confirmed

~~I direct that the accused be not committed to prison or detention barracks until further orders.~~(1) E.O.W.

(1. AA 57A. Delete if not used.)

Date 24 Jul 44 (Sgd) E.W. Haldenby Brig COMMANDER 1 CDN BASE RET DEPOT Commanding Officer.

PART IV. PROMULGATED AND EXTRACTS TAKEN. (RP 53, KR Can 576, 577.)

Accused.	Date.	Signature of Offr.
C30958 PTE FEENEY E.T.	26 JUL 44	D.A. Bernard Lt-Col

ALL DELETIONS AND ALTERATIONS WILL BE INITIALLED.

RECEIVED 1 SEP 1944 CMHQ BRANCH

RECORDED AT CMHQ IN AB 160. XXX-100

FIELD GENERAL COURT-MARTIAL

CFA86 (In lieu of AFA3) 40/F & S/1608 (40/10) 4/38B

Convened by Order of Brigadier E.W. Haldenby Comd 1 Cdn Base Rft Gp CMF dated 20 July 44

ACCUSED.

(As to the trial of two or more charged jointly see RP 16, 71, 109. As to reasons for showing (a) permanent or confirmed rank, and (b) appmt, A/rank or A/appmt, if any, see AA 182, 183, fns, KR Can 30E, 328, 330.)

Number.	(a) Prmnt R. (b) Appmt, A/R or A/Appmt.	Full Christian Names.	Surname.	Unit.
C-30958	Pte.	Edward Thomas	FEENEY	8 Bn 2 CBRD

PROCEEDINGS REVIEWED 28 Sep 44 J.C. Dalch Capt REVIEWING OFFICER, JAG BRANCH, CMHQ

I 136

JCHC

PROCEEDINGS OF TRIAL.

Held in the Fd in (country) Italy on (date(s)) 21 July 44

RECORD FORM A—OPENING PROCEEDINGS AND ARRAIGNMENT.

A1. The President, Members, waiting Member, ~~JA, if any~~, and Offrs under instr, if any, assemble, and the Court is closed.

(PRINTED MATTER, NOT IN ITALICS FOR GUIDANCE, WILL BE DELETED, IF NOT USED OR APPLICABLE, AND INITIALLED BY PRES OR JA. The Schedule referred to throughout is on p 4. Citations do NOT include all relevant fmn ROs. For guidance on procedure when a variation in this form arises, see form for GCM in MML pp 741 to 759. A brief record of such variation will be made and given a number having reference to appropriate or preceding para number herein. See back of Convening Order, CF A95, for oaths and instrs on how to record addresses, evidence, etc, which instrs are hereafter called "Notes". As to general provisions for conducting the trial see AA 53, RP 56, 63-70, 73, 74, 94, 103, 119, 132.)

A2. The President initials and lays before the Court the Convening Order and Charge Sheet(s) attached thereto.(1) The Court is satisfied that it is properly convened and constituted(2), accused is (are) amenable to military law, and each charge discloses an offence.(3)

(1. As to use of Summary of Evidence see RP 17 fn 6. 2. AA 49, 50, RP 105-107. 3. RP 11-13, 23, 24.)

A3. The Court is opened. The accused is (are) brought before the Court. At 0930 hours trial commences.

A4. The Prosecutor produces a Medical Certificate that accused is (are) fit to undergo trial by court-martial.(1) ~~The Prosecutor informs the Court that accused elected to be tried by court-martial instead of being dealt with summarily by the CO.(2)~~

(1. KR Can 557. 2. AA 46(B), RP 60 fn 1. For effect see KR Can 563(c). Delete, if not applicable.

A5. ~~President to accused: Do you object to ..... as interpreter? Ans .....~~

The Interpreter is sworn.(1) Do you object to ..... as shorthand writer? Ans .....

~~The shorthand writer is sworn.(1)~~

(1. RP 72. Delete, if none employed.)

A6. The Convening Order and names of the President and Members of the Court are read to the accused.(1) President to accused: Do you object to be tried by me as President or by any of the Members of the Court? Ans No.(2)

(1. RP 110. 2. If no objection, waiting member retires. RP 69(B). If objection, see procedure AA 51, RP 25, 71, 18, MML p 742.)

A7. The President, Members, ~~JA, if any~~, and Offrs under instr, if any, are sworn.(1) The following are the ranks, names and units of the offrs comprising the Court, etc:

President	Major	A.L. MacInnes	RCA	8 Bn 2 CBRD
Member	Capt	J. McConvey	C.I.C.	2 Cdn Reallocation Centre
Member	Lieut	E.P.W. La Fleur	C.I.C.	1 Bn 1 CBRD
Judge-Advocate				
Prosecutor	Lieut	F.J. Cullitan	C.I.C.	8 Bn 2 CBRD
Defending Offr	Capt	D. Dion	C.I.C.	8 Bn 2 CBRD

Questions by President: Is the Prosecutor a lawyer? Ans No. Is the Defending Offr a lawyer? Ans No.(2)

(1. RP 26, 27, 109, 111. List of offrs under instr will be returned separately with proceedings for information of Conv Offr.)
(2. If Pros a lawyer and Def Offr not, accused is entitled to an adjournment when RP 89 (B) and fn 2 were not followed. See O1 p 3.)

A8. The accused ..... before arraignment make(s) (no) ~~no~~ plea .....(1)

(1. If a special plea is made for separate trial on one or more charges (RP 62(E), 106), or as to the jurisdiction of the Court (RP 34, 35(A), 113), or in bar of trial (RP 36), or as to accused's mental fitness to stand trial (AA 130, RP 57), or by one of several accused charged jointly to be tried separately (RP 16, 71), such plea, the addresses made in support or against, the evidence, if any, and finding are recorded per Notes. For forms of record see references in fns to RsP cited. Insert in A8 rank and name of the accused making the plea.)

A9. The accused is (are) arraigned ~~(separately)~~ on all charges in the charge sheet.(1) The accused does (do) not object to any charge.(2) There is no amendment to be made to the Charge Sheet.(3) The President records the pleas in Part I of the Schedule.

(1. RP 31, 112. See para 1 of Instrs p 2. When more than one Charge Sheet see RP 62; when several accused to be tried separately see RP 71(C), and use separate copies of CF A96 to record proceedings. 2. RP 32, RP 33. If otherwise, delete and make appropriate record per Notes.)

A10. The Court (~~arraigned and~~) considers the Instrs on Procedure after Arraignment at top of p 2. The proceedings are continued on Record Form B

PRESIDENT OR JA WILL INITIAL ALL DELETIONS AND ALTERATIONS.

INSTRUCTIONS ON PROCEDURE AFTER ARRAIGNMENT.

1. *The accused may not plead or be found Guilty on more than one of two or more charges laid in the alternative.* (*RP 37(A).*) *As to withdrawal of alternative charges by Prosecutor see RP 35(C). No other charge can be withdrawn for any reason without authy from Convening Offr. If Convening Offr concurs, Court may accept plea of Guilty to lesser, etc, offence.* (*RP 44(H).*) *Accused may change a plea of Not Guilty to Guilty during trial.* (*RP 38.*) *As to refusing to plead or not pleading intelligibly see RP 35(A). As to plea when sentence may be death see RP 35(D).*

2. *The proceedings on each charge sheet* (*RP 62*) *after arraignment will be conducted as follows in the respective circumstances stated :*

I. If pleas to all charges are GUILTY, use Record Form B below.

II. If pleas to all charges are NOT GUILTY, use Record Form D on p 3.

III. If pleas to some charges are GUILTY and to other charges are NOT GUILTY and,

(a) Such mixed pleas occur when there are no alternative charges in the Charge Sheet, use Record Form C below. (*RP 37(A).*)

(b) Such mixed pleas occur in a set of two or more charges laid in the alternative, see RP 37 (A) and fn 2 as to discretion of Court, (i) to try the accused on all such alternative charges as if he had pleaded Not Guilty thereto, or, (ii) to record the pleas as the findings of Court. After deciding between (i) and (ii), Court will proceed under foregoing instrs as may be appropriate to result of its decision. See MML p 744 Instrs (2).

3. *As to responsibility of President to accused see RP 59, 60(C) ; powers and duties of JA see RP 103 ; duty of Prosecutor see RP 60(A) (B) ; duty and privileges of accused and Defending Offr see RP 60(C), 87(C), 91, 92 ; swearing and withdrawal of witnesses from Court see RP 81, 82 ; questioning of accused see RP 80, 87(C), 92(B), and of witnesses see RP 83-85 ; calling or re-calling of witnesses by Court, etc, see RP 75-79, 86, 116 ; use of Summary of Evidence at Trial see RP 17(E) fn 6 ; and responsibility of JA or Pres to record proceedings see RP 94, 96.*

RECORD FORM B—PROCEEDINGS ON PLEAS OF GUILTY TO ALL CHARGES.

B1. The President or JA, if any, complies with RP 35(B) by explaining to the accused the nature and meaning of the charge(s)(1), and that on his plea of Guilty there will be no regular trial but merely a consideration of the sentence to be awarded after he has been given an opportunity to make a statement in reference to the charge(s), call witnesses as to character and make an address in mitigation of punishment.(2)
(*1. RP 35 fn 3. 2. MML p 54 para 47.*)

B2. President to accused : The Court will now receive any statement you desire to make in reference to the charge(s).(1) If it appears from your statement that there are circumstances which indicate that you do not understand the effect of the plea of Guilty(2), or which show provocation or extenuation in respect of which in your interest the witnesses for the Prosecution should be examined(3), we shall advise you to change your plea to Not Guilty. In making a statement you will not be sworn or subject to cross-examination ; and anything you say will not be used in evidence against you after you change your plea. If, however, it appears to the Court that your statement affects only the amount of punishment to which you are liable, you will not be advised to change your plea and you will be given an opportunity later to prove your statement by sworn testimony, if you so desire.(4)

President to accused : Do you wish to make a statement ? Ans. No.(5)
(*1. RP 37(B). 2. RP 37(D) fn 6. 3. RP 35(B) fn 5 para 3, MML p 54 para 47. 4. See para E3 of Record Form E. 5. Statement, if any, recorded per Notes.*)

B3. ~~The Court considers the accused's statement.~~(2) The Court decides (not) to advise accused to change his (~~their~~) plea(s) of Guilty to Not Guilty on ..... charge(s). The accused is (~~are~~) so informed, ~~and he (they) change(s) his (their) plea(s) on ..... charge(s).~~ ~~Part I of the Schedule is amended accordingly.~~
(*1. Court may be closed to consider the statement. Delete whole or part not used.*)

B4. On the charge(s) to which the plea(s) of Guilty is (~~are~~) not changed the President records finding(s) of Guilty in Part I of the Schedule.(1)
(*1. RP 35(B). If any plea(s) is (are) changed, use Record Form C or D as appropriate.*)

B5. The Summary of Evidence is marked Ex "A", initialled and read aloud by the President.(1)
(*1. If there is no Summary, or if it is inadequate, comply with RP 37(B). If there is any evidence inconsistent with any plea standing as Guilty, Court will advise accused to change such plea and, if changed to Not Guilty, try such charge(s) by use of paras D1 to D8 inclusive of Record Form D on p 3. RP 37(D).*)

B6. The accused having been found Guilty on one or more of the charges, the proceedings are concluded by using Record Form E on p 3.

RECORD FORM C—PROCEEDINGS ON MIXED PLEAS OF GUILTY AND NOT GUILTY.

C1. As to the charges on which accused pleaded NOT GUILTY the trial is continued by using paras D1 to D8 inclusive of Record Form D on p 3 before proceeding with C 2.(1)
(*1. RP 37(A) (E).*)

C2. The charges on which accused pleaded GUILTY are read to him (them) again, and the trial is continued by using paras B1 to B5 of Record Form B above.(1)
(*1. Under B5 such parts only of the Summary of Evidence are read as relate to the charges dealt with under C2. If any plea is changed to Not Guilty, trial thereon proceeds by complying with paras D1 to D8 inclusive in Record Form D on p 3 and making an appropriate record thereof on a separate sheet.*)

C3. The accused having been found Guilty on one or more of the charges, the proceedings are concluded by using Record Form E on p 3.

PRESIDENT OR JA WILL INITIAL ALL DELETIONS AND ALTERATIONS.

Fix here Loose Sheets of Record.

RECORD FORM D—PROCEEDINGS ON PLEAS OF NOT GUILTY TO ALL CHARGES.

D1. President to accused : Do you wish to apply for an adjournment on the ground that any of the rules relating to procedure before trial have not been complied with, and that you have been prejudiced thereby, or on the ground that you have not had sufficient opportunity to prepare your defence ? Ans. .....(1)
(*1. If "yes", see RP 39(A) for procedure. Statement or evidence, if any, is recorded per Notes.*)

D2. The Prosecutor makes (an) (no) opening address.(1)
(*1. RP 39(B), 60(A) (B), 90, 92(C) (D). Record address per Notes, subject to RP 95(C).*)

D3. The evidence for the Prosecution is taken.(1)
(*1. RP 39(C), 114, KR Can 555. Record evidence per Notes. As to Prosecutor giving evidence himself see RP 39(D) (E).*)

D4. The Prosecution is closed.(1) The Defending Offr submits that the evidence for the Prosecution does not establish a prima facie case against the accused on the ..... charge(s).(2) The Court is closed, and considers the submission.(3) The Court is re-opened, and the President announces that the submission is disallowed on the ..... charge(s), and allowed on the ..... charge(s), and that, accordingly, the trial will proceed on the former, but the accused is (are) found Not Guilty on the latter charge(s).(4)
(*1. Delete remainder of this para, if submission not made. 2. Arguments on submission, answer and reply are recorded per Notes. 3. RP 40 fn 1. See MML p 72 paras 12-14 and p 81 para 42. 4. Delete part not used. If accused acquitted on all charges use second alternative in para D8.*)
NB : If trial proceeds, accused must be allowed great latitude in making his defence, and the Court should not stop his defence solely on ground of irrelevance. (*RP 60(C), 114, 115.*)

D5. President to accused : You will now proceed with your defence.(1) You may, if you wish, give evidence yourself on oath as to the facts or your character or both, in which case you will be subject to cross-examination.(2) You may, however, make a statement without being sworn, and you will not be subject to cross-examination.(3) But a statement which could have been made on oath will not carry with the Court the same weight as sworn testimony.(4) You may call witnesses in your defence and as to character, whether you give evidence or make a statement or do neither.

President to accused : Do you wish to give evidence yourself as a witness, make a statement, or do neither ? Ans. ..... Do you intend to call witnesses on your behalf ? Ans. ..... Are they witnesses as to character only ? Ans. .....
(*1. RP 115. 2. RP 40(A), see 80(D). 3. RP 40 fn 10. 4. RP 40 fns 2, 9.*)

D6. Consequent on the answers recorded in para D5 the appropriate procedure for the defence is followed.(1)
(*1. RP 114, 115, 116. For procedure see Notes on back of Convening Order, CF A95. Evidence for accused as to his character should, if in his interest, be given before the finding. See RP 46(A) fn 1, 86(C). Note the further opportunity in para E1 of Record Form E. Record per Notes addresses, statement, evidence and any summing up by the JA under RP 42, 103(e).*)

D7. The Court is closed to consider the finding(s).(1) The finding(s) of the Court is (are) recorded in Part I of the Schedule.(2) The Court is re-opened.
(*1. RP 43, 113(A). See Notes in Part I of Schedule. 2. RP 44(A).*)

D8. The President announces the finding(s), if any, of Not Guilty, and states to the accused that the finding(s) of the Court on the ..... charge(s), being subject to confirmation, will be promulgated later.(1)
Or, The President announces that the accused is found Not Guilty on all charges and is to be released forthwith, and that the proceedings are accordingly terminated. Part I of the Schedule is dated and signed.(2)
(*1. AA 54(3) (6), RP 45, 120(A). 2. AA 54(3), RP 45, 117. This alternative announcement is not applicable when there are pleas of Guilty outstanding and dealt with under Record Form B or C.*)

D9. The accused having been found Guilty on one or more of the charges, the proceedings are concluded by using Record Form E below.

RECORD FORM E—PROCEEDINGS ON CONVICTION BEFORE SENTENCE.

E1. President to accused : Do you wish to give evidence yourself or to call any witnesses as to your character ?(1)
Ans. No.
(*1. If evidence has already been given by accused or his witnesses as to his character, delete this para. RP 37(C) fn 4, 46 fn 1. Accused and witnesses are sworn. Evidence recorded per Notes.*)

E2. The Prosecutor produces Statement(s) as to Character and Particulars of Service(1), and certified true copy (copies) of Conduct Sheet(s)(2), purporting to refer to the accused, which he submits to the Defending Offr for examination, and then to the Court for admission in evidence. The Court is satisfied that these documents refer to the accused, because (i) they purport to be signed in the manner required by AA 163(l) (g) (h), and (ii) they purport to refer to (a) soldier(s) having the same number, rank, name and corps as the accused. Admitted in evidence and marked Ex B and Ex C respectively.(3)
(*1. AFB 355 or AFB 296. 2. MML 6. 3. RP 46, KR Can 558. If above documents not produced, see RP 46 fn 1 para 1.*)

E3. President to accused : Do you wish to address the Court on the Statement(s) and Conduct Sheet(s), and in mitigation of punishment ?(1) Ans. In mitigation I plead leniency.(2)
(*1. RP 37(C), 46(D). 2. Address, if any, recorded per Notes. Court should permit accused or his witnesses to prove on oath anything here or previously stated which would affect the amount of punishment. RP 37(F) fn 7.*)

E4. The President states that the Court is closed to consider the sentence, and that the sentence to be awarded by the Court, being subject to confirmation, will not be announced, but will be promulgated later, and the proceedings in open court are accordingly terminated.(1)
(*1. AA 54(6), RP 120(A).*)

E5. The Court considers the sentence.(1) The President records the sentence in Part I of the Schedule, which is dated and signed by him ~~and the JA, if any~~.(2)
(*1. When several accused tried separately see RP 71 (D). One sentence only, comprised of the punishment or punishments laid down in AA 41, 44 and its proviso, is to be awarded to cover all charges in all charge sheets on which accused found guilty. RP 48. As to sentences see AA 44, 138, 182, RP 46-50, 69, 118, 119(A), KR Can 308, 320, 563-566, Overseas RO 309, 2323, MML p 60, 757-759. As to sentences assigned for civil offences by the law of England see AA 41(5), MML p 130. When accused already under sentence of imprisonment or detention see AA 44(1B), 68(1), KR Can 544. 2. RP 52. As to release from arrest by Confirming Offr see KR Can 549. As to assembly and disposal of record after trial see instrs on back of Convening Order.*)

PRESIDENT OR JA WILL INITIAL ALL DELETIONS AND ALTERATIONS.

CHARGE SHEET

The accused, N. C.30958, Pte. Edward Thomas FEENEY
8 Bn., 2 C.B.R.D., a soldier of the Canadian Army
Overseas, is charged with:

FIRST CHARGE
Section 15 (1)
Army Act.

When on Active Service ABSENTING HIMSELF WITHOUT LEAVE
in that he
in the Field, in Italy, absented himself without
leave from 0800 hrs 22 Jun 44 until apprehended by
1 Cdn L of C Provost Corps at 1045 hrs 30 Jun 44.
(Time absent: 8 days, 2 hours, 45 minutes.

(F.B. CONRAD) Lt-Col.
Commanding,
8 Bn., 2 C.B.R.D.

Field
6 Jul 44

TO BE TRIED BY FIELD GENERAL COURT MARTIAL

(E.W. Haldenby) Brigadier
Comd 1 Cdn Base Rft Gp
Cdn Army - C M F

Italy
In the Field
20 Jul 44

CFA05 (In lieu of AFA8)
40/P&S/1697 (2948)

FIELD GENERAL COURT-MARTIAL

(Whether the accused to be tried is under his comd or not, a FGCM may on application to him be convened by any offr of Cdn Army Overseas, or of any other force if authorized in law, in immediate comd of troops on active service, subject to RP 105(C) and restrictions imposed by appropriate authy, AA 49, 50, RP 104-107, 114. As to the duties and privileges of the Convening Offr in dealing with the application see MML Chap V paras 20 and 23, RP 87(B).

There should be a separate Convening Order for each person to be tried separately by the same Court. RP 71(C), 109. As to separate charge sheets see RP 62, and as to separate trial on charges in the same charge sheet see RP 108. As to two or more accused charged jointly see RP 16, 109.

As to reasons for showing (a) permanent or confirmed rank, and (b) appmt, A/rank or A/appmt, if any, see AA 182, 183, fns, KR Can 308, 328, 330.)

ACCUSED.

Number.	(a) Prmnt R.	(b) Appmt, A/R or A/Appmt.	Full Christian Names.	Surname.	Unit.
C30958	Pte		Edward Thomas	FEENEY	8 Bn 2 CBRD

CONVENING ORDER.

1. Whereas complaint has been made to me, the undersigned, that the person(s) named above as the accused, being subject to military law, has ~~(have)~~ committed the offence(s) set forth in the Charge Sheet(s) attached and on (date) 20 July 44 endorsed by me, ~~(or by an offr of my staff for me)~~, "To be tried by Field General Court-Martial".

2. And whereas I am of opinion that it is not practicable that such offence(s) should be tried by an ordinary General Court-Martial; ~~(and that it is not practicable to delay the trial for reference to a superior qualified offr.)~~

(Delete part in brackets when not required for compliance with RP 105(C).)

3. I hereby convene a Field General Court-Martial to try the said person(s), and to consist of the Offrs appointed or detailed hereunder.

~~4. I am unable to appoint (a) three Offrs to form the Court, (b) a Fd Offr as President, for the reason I have attached hereto.~~

(AA 49, RP 106(8), 107(A). Delete the whole or part, if not applicable.)

~~5. I also appoint as Judge-Advocate thereat the Offr mentioned hereunder.~~

(RP 106(E). Delete, if none appointed.)

PRESIDENT.

(Rank.)	(Must be named. RP 106.)		(Unit.)
Major	A. L. MacInnes	(RCA)	8 Bn 2 CBRD

MEMBERS.

(Rank.)	(Named or detailed. RP 106.)		(Unit.)
Lieut	J. McConvey	(CIC)	2 CDN Reallocation Centre
Lieut	E. P. W. LaFleur	(CIC)	1 Bn 1 CBRD

WAITING MEMBER.

(Rank.)	(Named or detailed, if any. RP 106.)	(Unit.)
Capt or Lieut	to be detailed by OC 1 Bn 1 CBRD	

~~JUDGE-ADVOCATE.~~

(Rank.)	(Must be named, if any. RP 106.)	(Unit.)

On Active Service in the Fd

in Italy (Country.)

Date 20 July 44

(Signed personally. RP 105 fn 2.)

Brigadier (Rank.)

(E. W. Haldenby)

Commanding 1 CDN BASE RFT GP - C.F

Convening Officer.

CONVENING OFFR WILL INITIAL ALL DELETIONS AND ALTERATIONS

(See overleaf for oaths and notes for use on trial.)

MEDICAL OFFICER'S CERTIFICATE
(KR (Can) 557)

A.F.W.

I CERTIFY that I have this morning examined

No. C.3.1.9.5.6. Rank PTE. Name Feeney

of 8 Bn., 2 C.B.R.D., and in my opinion he is fit/~~unfit~~ to undergo trial by Court Martial.

In the Field

Date 21-7-44

N.S. Bowers Capt.
(N.S.BOWERS) Capt.
Medical Officer, 8 Bn, 2 CBRD.

Officer under Instruction

Lieut R. Lachance C.I.C. 1 Bn 1 CBR Gp.

C 20958 Pte Fung. E. T.

Address to the Court in mitigation of sentence.

I just want to show the attention of this Court on few points which, though they are not excuses, will, I am sure be sympathetically considered by this Court when awarding the sentence.

1- The man is 44 years old.

2- He is a veteran of the last War during which he was 2½ years at the front line with the 42nd Bn in France.

3- He wears the Victory and the service Ribbon and the actual Canadian medal

4- The man is married in U.S.A. where his wife lives with their two children respectively 16 and 17 years old.

5- The man receives letters from the children but no news from his wife since a good while. He wrote many time to have explanations without any results. The children do not want to be mixed in

any trouble never talks of their mother in their letters.

6- The man despite his age has joined as volunteer in May 41. He came in Engl. London in Aug. 41 and in Africa July 43. Following the 15th Hyth.

7- He has been recommended for P.O.W. works. You know that for men like him, it actually means very much.

8- But unfortunately the man's nerves (illegible) are very low and he shrinks quite often and when he starts shrinking he loses absolutely control on himself. He then starts thinking to his misdeeds and you know what is the result.

For all those reasons, I would ask the Court to consider rather the psychological and pathological point of view in this case and to use great clemency for that man. I would ask the Court if it is really useful for anyone to send that man for a long term in detention or field

punishment camp. Would it not be wiser to give him a break and help him going back to the old country. He has already made his good share in that business of us all. And I am sure that he will appreciate very deeply a good conduct that will certainly helps him to become a better citizen of his.

Note! P.S. I must add on the behalf of his C.O. M., I have just seen, that whenever the man is sober and on the job he is a very good and conscientious worker.

Lieut. U.S. Capt

Italy in the Field
21 July 1944.

Exhibit "A"

Summary of Evidence in the case of C.30958, Pte. FEENEY, E.T. a soldier of the Canadian Army Overseas on the strength of 39 Coy., 8 Bn., 2 C.B.R.D., C.A., C.M.F.

The Commanding Officer directs that the evidence be taken on oath.

FIRST WITNESS
For the Prosecution

No. A.99303, Cpl. SCHEDLER, W.E. on the strength of 39 Coy., 8 Bn., 2 C.B.R.D., a soldier of the Canadian Army Overseas, having been duly sworn states:

I am permanent Orderly Corporal of 39 Coy., 8 Bn., 2 C.B.R.D. At 0800 hrs, 22 Jun 44, I called the roll of 39 Coy and Pte. Feeney, E.T., was absent. I then checked further to ascertain whether or not Pte. Feeney had proceeded directly to his duties. He had not. I then checked further to ascertain whether or not Pte. Feeney was in his billets. He was not. I then reported him absent on the Tattoo Roll Call at 2200 hrs., 22 Jun 44 as being absent from 0800 hrs., 22 Jun 44.

Pte. Feeney, E.T., was not on any roll call that was held between 0800 hrs, 22 Jun 44 and 1045 hrs., 30 Jun 44 at which time he was apprehended by 1 Cdn L of C Provost Corps.

I submit herewith a certificate of apprehension in accordance with Army Act Sec 163 (1) (jj) of Pte. Feeney, E.T., signed by Capt. H.F.Law, O.C., No 1 Cdn L of C Prov Coy, attached to this summary and marked Exhibit "A".

W.E.Schedler
(W.E.Schedler) Cpl.

The accused declines to cross examine the witness.

The accused was cautioned as follows:

Do you wish to make any statement or to give any evidence upon oath. You are not obliged to say anything or to give evidence unless you wish to do so, but whatever you say or any evidence you give will be taken down in writing and may be given in evidence.

The accused declines to make a statement or to give evidence at this time.

I certify that the foregoing Summary of Evidence, consisting of one (1) typewritten page was taken down by me in the presence of the accused and the Rules of Procedure 4 (c)(d)(e) & (f) have been complied with.

D.L.Glover
(D.L.Glover) Lieut.
Officer Detailed to take Summary

In the Field
3 July 44.

EXHIBIT "A"

CERTIFICATE OF APPREHENSION
SURRENDER

In accordance with Army Act Sec 163 (1) (JJ)

I, certify that Regt No C-30958

Rank Pte Name PEENEY E.T.

Unit 6 Bn. 2 C.B.R.D.

was apprehended by No. 1 Cdn L of C Provost Company

at Avolline, Italy, at approximately 1045 hrs

30 June 1944. At the time of his apprehension surrender

he was wearing Military Uniform

(Signature) (Name) (Rank)

No. 1 Cdn L of C Prov Coy

MFM 6
(AFB 127)
40/P&S/136 (3438)

No C39058 Name FEENEY, E.T. | Sqn, Battery, or Company | Corps R.C.A.M.C. | Date of enlistment 8 May 1941 | GC Badges | Service or Proficiency Pay |

Date of last entry in Company Conduct Sheet | No and date of last drunk | Period not reckoning towards freedom from extra fine | Sheet No 1 | Signature OC Company, etc | Character

Place	Date of offence	Rank	Cases of drunkenness	OFFENCE	Names of Witnesses	Punishment awarded	Date of award or of order dispensing with trial	By whom awarded	Remarks
Sheet destroyed 8-11-41, last entry 4-10-41					Lt-Col. J.M. Miller				
Field	12 Jul 1942	Pte.		AWL 2359 11-7-42 until 1400 hrs 12-7-42.	RSM Crawford Sgt Lalonde	168 hrs Det. 5 days pay	13 Jul 42	Col. Miller	
Field	1 Apr 1943	Pte.		AWL from 2359 hrs 1-4-43 until 2200 hrs 5-4-43	S/Sgt Ford Sgt. Ross	Forf 10 days pay.	8 Apr 43	Col. Miller	
Field	31 Jul 1943	Pte.		Sec 15(1) AA, NOAS, AWL from 2100 hrs 31 Jul 43 until app. by M.P. at Constantine at approx 2155 hrs 5 Aug 43 (Absent: 5 days 55 min.	RSM Surrage Documentary Exhibit "C" A.L.M.	28 days forf of pay	9 Aug 43	Col. GRD Farmer	6 days auto forf of pay.

(PTO)

Place	Date of offence	Rank	Cases of drunkenness	OFFENCE	Names of Witnesses	Punishment awarded	Date of award or of order dispensing with trial	By whom awarded	Remarks
Field	3 Sep 1943	Pte		Sec 15(1) AA, WOAS AWL from 0730 hrs 3 Sep 43 until 2300 hrs 3 Sep 43 (Absent:15 hrs 30 min.)	L/Sgt Allen S/Sgt. Cobham	7 days forf pay.	6 Sep 43	Col. GRD Farmer	1 days auto forf pay.
Field	4 Sep 1943	Pte.		Sec 10(4) AA, WOAS broke out of camp when under open arrest at 0830 hrs 4 Sep 43 returning at 1930 hrs, 4 Sep 43 under influence of alcoholic beverages.	L/Sgt Allen S/Sgt. Conbanp	14 days forf pay	6 Sep 43	Col. GRD Farmer	1 days auto forf pay concurrent with award on 1st charge 6 Sep 43
Field	18 Sep 1943	Pte		(1) Sec 18 AA Stealing Public property (2) Sec 40 AA Improper possession-NOT GUILTY TRIED BY FIELD GENERAL COURT MARTIAL EX. FINDINGS AND SENTENCE CONFIRMED BY Col. G.R.D.FARMER, Commanding #15, Cdn Gen Hosp. R.C.A.M.C.	GUILTY	9 Months DETENTION.	30 Sep 1943	F.G.C.M.	Forf of pay: 274 days FRI 149(1)(c)(i) 12 days FRI 149(1)(c)(i) Total 286 days to run concurrent with forf awarded 6 Sep. Total forf to read 277 days.

RELEASED FROM #1 F.P.C. 31 Mar 44. REMISSION Earned 91 days.

No C30958 Name FERNEY, E.T. | Sqn, Battery, or Company | Corps R.C.A.M.C. | Date of enlistment | GC Badges | Service or Proficiency Pay | MFM 6 (AFB 122) 40/P&S/136 (3438)

Date of last entry in Company Conduct Sheet | No and date of last drunk | Period not reckoning towards freedom from extra fine | Sheet No 2 | Signature OC Company, etc | Character

Place	Date of offence	Rank	Cases of drunkenness	OFFENCE	Names of Witnesses	Punishment awarded	Date of award or of order dispensing with trial	By whom awarded	Remarks
Field	15 Apr 1944	Pte.		AA Sec 15(1) WOAS, AWL from 2200 hrs 15 Apr 44 until apprehended by the C.M.P. at 1100 hrs, 11 May 44 (Absent 25 days, 13 hours)	Documentary	28 days Det. 28 days pay FR&I 149(2)	20 May 44	Major LF Macdonald	Forf 26 days pay FR&I 149(1)(a)

CERTIFIED TO BE A TRUE COPY FROM THE REGIMENTAL BOOKS IN MY CUSTODY.

(C. ARMSTRONG) Capt & Adjt., 8 Bn., 2 C.B.R.D.
Officer having Custody of Regtl Books.

(PTO)

Exhibit "B"
A.L.L.

ARMY FORM B.213.

Statement as to Character and Particulars of Service of Accused.

Number.	Rank.	Name.	Regiment (or as the case may be).
C.30958	Pte.	FEENEY, E.T.	8 Bn., 2 C.B.R.D.

1. The following is a fair and true summary of the entries in the regimental and squadron, battery or company conduct sheets† of the accused, exclusive of convictions by a court martial or a civil court, of summary awards under section 47 of the Army Act, and of cases in which trial has been dispensed with :—

Note.—At a trial by field general court martial this summary may be compiled from the field conduct sheet.
The conduct sheet(s) mentioned should be produced in court with this statement but not annexed to the proceedings.

† See para. 677, K.R., 1940.

* The numbers herein stated should correspond with the number of entries in the conduct sheets, provided that where given the most serious offence in each entry, and in any recognized special acts of gallantry or distinguished conduct.

Instruction.—If the charge is for drunkenness, the entries in drunkenness must be stated separately and dated.

	* Within last 12 months.	*Since Enlistment.
For AA Sec 15(1) AWL	3 times	5 times.
For AA Sec 10(4) Break'g arrest	1 time	1 times.
For AA Sec 18 Stealing	1 time	1 times.
For ~~xxxx

Schedule of Convictions by a Court Martial or Civil Court, of summary awards under Section 47 of the Army Act and of cases in which trial has been dispensed with of accused.

No. C. 30958 Rank Pte. Name FEENEY, E.T of 8 Bn 2 CBRD. Regiment (or as the case may be).

(INSTRUCTION—A verbatim extract from the regimental books, stating these convictions and dispensations with trial, must be inserted.)

Description of Court by which tried, or status of officer disposing of the charge or dispensing with trial.	Date and place of trial, or summary award under A.A. 47, or of order dispensing with trial.	Charges upon which convicted, or in respect of which trial was dispensed with.	Sentence of the court or authority disposing of the charge, or order of the dispensing authority.	Punishment remitted.
F.G.C.M.	30 Sept 1943	(1) Sec 18 AA Stealing Public Property (2) Sec 40 AA Improper possession	GUILTY NOT GUILTY 9 Months DETENTION	Remission Earned 91 days.
	Findings & Sentence confirmed by Col. GRD Farmer, Comd 15 C.G.H. (RCAMC)			

I HEREBY CERTIFY that the foregoing schedule of convictions and dispensations with trial is a true extract from the regimental books in my custody.

Signed this 21 st day of June 44

E. Armstrong Capt

In the rank of ..... years.

In the rank of ..... years.

In the rank of ..... years.

Date of Promotion.

(INSTRUCTION.—If any matter in any of the above paragraphs cannot be stated from the regimental books the paragraph must be struck through, except that in the case of a trial by field general court-martial the information may be obtained from such sources as are available and the paragraphs answered accordingly.)

In the case of C.30958, Pte. FEENEY, E.T.

STATEMENT OF THE ACCUSED RE: DEFENDING OFFICER

In the event that my case should be brought before a Field General or General Court Martial, I request that an officer be appointed to defend me and that if possible he be legally qualified.

E.T. Feeney Pte.
(E.T. Feeney) Pte.
(Accused)

In the Field
6 July 1944

In the case of C.30958, Pte. FEENEY, E.T.

ACKNOWLEDGEMENT OF SERVICE

Receipt is acknowledged of copy of Summary of Evidence and of Charge Sheet.

E.T. Feeney Pte.
(E.T. Feeney) Pte.
(Accused)

Witnessed:

In the Field
6 July 1944

I acknowledge having received corrected copy of Summary of Evidence and of Charge Sheet this date.

12 Jul 44.

E.T. Feeney
(E.T. Feeney) Pte.

In the case of C.30958, Pte. FEENEY, E.T.

List of Witnesses:

FOR THE PROSECUTION

1. Cpl. SCHEDLER, W.E., A.99303, - 39 Coy, 8 Bn, 2 C.B.R.D.

FOR THE DEFENCE

Nil.

H.Q.C. 55-F-860 CONFIDENTIAL

DEPARTMENT OF NATIONAL DEFENCE OTTAWA, CANADA

SUBJECT

FIELD GENERAL COURT-MARTIAL

FFF. EDWARD STORY B-74037

CENTRAL REGISTRY	DATE	J.A. OR D.F.	INITIALS	REFERRED TO	FOR	INITIALS	DATE
				(For purpose for which record must be returned—file number should appear here "W.A.'s Minute")			2-12-46

CONFIDENTIAL
H.Q.C. 55-F-860

OVERSEAS COMBINED

NOTICE

SCHEDULE.

PART I. PLEA(S), FINDING(S) AND SENTENCE.

Accused: B74037 Pte EDWARD STORY FEE

Charge. (Insert "alternative" where applicable.)	Plea. (See Instrs p 2.)	Finding. (See note below.)	(Space for use as required for further charges, accused charged jointly, special findings, etc.)
1st AA 10 (1)	Not Guilty	Not Guilty	
2nd AA 8 (2)	Not Guilty	Guilty	
3rd			
4th			
5th			
6th			

(Note: As to findings for lesser offences see AA 36, RP 44; findings on alternative charges see MML p 483 fn 4 para 2, RP 44; special findings see RP 44 and MML p 753, and in loss of kit see RP 44 fn 6.)

~~At present under sentence for~~ beginning on (date) (1)

(1. Insert sentence being served, or delete, if not applicable. See RP 46(A). Information should be found on MF B355 or AF B296.)

Time in confinement awaiting present trial—a total of 14 days, of which nil days were spent in hospital.(1)

(1. See RP 46(A) fn 2. Information should be found on MF B355 or AF B296 admitted in evidence under E2.)

Sentence Awarded by the Court: To undergo Detention for a period of six (6) months

(Sgd) KEC Judge Advocate, if any. July 7th 1944 Date awarded. (Sgd) K.E. Smith President. (RP 45, 50.)

(See back of Convening Order as to assembly and disposal of record after trial.)

PART II. MINUTE WHERE CONFIRMATION RESERVED. (AA 54(5), RP 120(F), MML p 760.)

Date (Sgd) Commanding

PART III. DECISION OF CONFIRMING OFFR ON FINDING(S) AND SENTENCE.

(For duties and powers see AA 54, 57, RP 37(D) fn 6, 46(A), 51-56, 120, MML pp 759-761, KR Con 567-577. Acquittals require no confirmation and cannot be revised: AA 54(3). Sending back finding or sentence for revision by Court: AA 54(2), RP 120(G). If not confirmed, accused may be tried again: AA 157, MML p 64. Minute of confirmation or non-confirmation may be altered before promulgation: RP 53, MML p 65. Quashing after promulgation: KR Con 573. Duties and powers of reviewing offrs: AA 57, 57A, RP 53A, 54. The Confirming Offr must sign here personally. AA 172 fn 1.)

My decision on the finding(s) and sentence set forth in Part I is: I confirm the finding and sentence but remit three months detention

I direct that the accused be not committed to prison or detention barracks until further orders.(1) (1. AA 57A. Delete if not used.)

(Sgd) E.C.W. Trasenby Brig.

Date 17 Jul 44 COMMANDER

Commanding 1 CDN BASE RFT GROUP Confirming Officer.

PART IV. PROMULGATED AND EXTRACTS TAKEN. (RP 53, KR Con 576, 577.)

Accused.	Date.	Signature of Offr.
B74037 Pte Edward Story FEE	15 Jul 44	E. Rickard Major

ALL DELETIONS AND ALTERATIONS WILL BE INITIALLED.

RECEIVED 21 AUG 1944 G.M.H.Q.

RECORDED AT CMHQ IN AD 103 4424-13

CF A96 (To lieu of AFA3) 40/P & S/1698 (4930)

FIELD GENERAL COURT-MARTIAL 4/38B

Convened by Order of Brig. E.W. HALDENBY Comd I.C.B.R. Grp. dated 8 Jul 44

ACCUSED.

(As to the trial of two or more charged jointly see RP 16, 71, 109. As to reasons for showing (a) permanent or confirmed rank, and (b) appmt, A/rank or A/appmt, if any, see AA 182, 183, fns, KR Con 308, 328, 330.)

Number.	(a) Prmnt R.	(b) Appmt, A/R or A/Appmt.	Full Christian Names.	Surname.	Unit.
B74037	PTE		EDWARD	STORY FEE	3 Bn. I.C.B.R.D.

PROCEEDINGS REVIEWED 23 Aug 44 W.C. Finch Capt

PROCEEDINGS OF TRIAL.

REVIEWING OFFICER, JAG BRANCH C.M.H.Q.

Held in the Fd in (country) ITALY on (date(s)) 11 July 44

RECORD FORM A—OPENING PROCEEDINGS AND ARRAIGNMENT.

A1. The President, Members, ~~waiting Member, JA, if any, and Offrs under instr~~ KEC, if any, assemble, and the Court is closed.

(PRINTED MATTER, NOT IN ITALICS FOR GUIDANCE, WILL BE DELETED, IF NOT USED OR APPLICABLE, AND INITIALLED BY PRES OR JA. The Schedule referred to throughout is on p 4. Citations do NOT include all relevant fmn ROs. For guidance on procedure when a variation in this form arises, see form for GCM in MML pp 741 to 759. A brief record of such variation will be made and given a number having reference to appropriate or preceding para number herein. See back of Convening Order, CF A95, for oaths and instrs on how to record addresses, evidence, etc, which instrs are hereafter called "Notes". As to general provisions for conducting the trial see AA 53, RP 56, 63-70, 73, 74, 94, 103, 119, 132.)

A2. The President initials and lays before the Court the Convening Order and Charge Sheet(s) attached thereto.(1) The Court is satisfied that it is properly convened and constituted(2), accused is (are) amenable to military law, and each charge discloses an offence.(3) KEC

(1. As to use of Summary of Evidence see RP 17 fn 6. 2. AA 49, 50, RP 105-107. 3. RP 11-13, 23, 24.)

A3. The Court is opened. The accused is (are) brought before the Court. At 1120 D hours trial commences. KEC

A4. The Prosecutor produces a Medical Certificate that accused is (are) fit to undergo trial by court-martial.(1) ~~The Prosecutor informs the Court that accused elected to be tried by court-martial instead of being dealt with summarily by the CO.(2)~~ KEC

(1. KR Con 557. 2. AA 46(8), RP 60 fn 1. For effect see KR Con 563(c). Delete, if not applicable.)

~~A5. President to accused: Do you object to~~ KEC ~~as interpreter? Ans~~

~~The Interpreter is sworn.(1) Do you object to~~ KEC ~~as shorthand writer? Ans~~

~~The shorthand writer is sworn.(1)~~

(1. RP 72. Delete, if none employed.)

A6. The Convening Order and names of the President and Members of the Court are read to the accused.(1) President to accused: Do you object to be tried by me as President or by any of the Members of the Court? Ans No, Sir (2)

(1. RP 110. 2. If no objection, waiting member retires. RP 68(8). If objection, see procedure AA 51, RP 25, 71, 15, MML p 742.)

A7. The President, Members, ~~JA, if any, and Offrs under instr, if any,~~ are sworn.(1) The following are the ranks, names and units of the offrs comprising the Court, etc:

President	MAJOR	K.E. SMITH	8Bn. I.C.B.R.D.
Member	CAPT.	D.W. CREELMAN	3Bn. I.C.B.R.D.
Member	LT.	A.J. MACRAE	2 Con. Recd Centre
~~Judge Advocate~~ KEC			
Prosecutor	LIEUT.	H.R. GRANT 3Bn	I.C.B.R.D.
Defending Offr	LIEUT.	M.J. CLONEY 3Bn.	I.C.B.R.D.

Questions by President: Is the Prosecutor a lawyer? Ans No Is the Defending Offr a lawyer? Ans Yes (2)

(1. RP 26, 27, 109, 111. List of offrs under instr will be returned separately with proceedings for information of Conv Offr.)
(2. If Pros a lawyer and Def Offr not, accused is entitled to an adjournment when RP 89 (5) and fn 2 were not followed. See DI p 33.)

A8. The accused before arraignment make(s) (no) (1) plea.

(1. If a special plea is made for separate trial on one or more charges (RP 62(E), 108), or as to the jurisdiction of the Court (RP 34, 35(A), 113), or in bar of trial (RP 36), or as to accused's mental fitness to stand trial (AA 130, RP 57), or by one of several accused charged jointly to be tried separately (RP 16, 71), such plea, the addresses made in support or against, the evidence, if any, and finding are recorded per Notes. For forms of record see references in fns to RsP cited. Insert in A8 rank and name of the accused making the plea.)

A9. The accused is (are) arraigned (separately) on all charges in the charge sheet.(1) The accused does (do) not object to any charge.(2) There is no amendment to be made to the Charge Sheet.(3) The President records the pleas in Part I of the Schedule. KEC KEC

(1. RP 31, 112. See para 1 of Instrs p 2. When more than one Charge Sheet see RP 62; when several accused to be tried separately see RP 71(C), and use separate copies of CF A96 to record proceedings. 2. RP 32, RP 33. If otherwise, delete and make appropriate record per Notes.)

A10. The Court (is closed and) considers the Instrs on Procedure after Arraignment at top of p 2. The proceedings are continued on Record Form D

PRESIDENT OR JA WILL INITIAL ALL DELETIONS AND ALTERATIONS.

INSTRUCTIONS ON PROCEDURE AFTER ARRAIGNMENT.

1. *The accused may not plead or be found Guilty on more than one of two or more charges laid in the alternative.* (*RP* 37(*A*).) *As to withdrawal of alternative charges by Prosecutor see RP* 35(*C*). *No other charge can be withdrawn for any reason without authy from Convening Offr. If Convening Offr concurs, Court may accept plea of Guilty to lesser, etc, offence.* (*RP* 44(*H*).) *Accused may change a plea of Not Guilty to Guilty during trial.* (*RP* 38.) *As to refusing to plead or not pleading intelligibly see RP* 35(*A*). *As to plea when sentence may be death see RP* 35(*D*).

2. *The proceedings on each charge sheet* (*RP* 62) *after arraignment will be conducted as follows in the respective circumstances stated :*

I. If pleas to all charges are GUILTY, use Record Form B below.

II. If pleas to all charges are NOT GUILTY, use Record Form D on p 3.

III. If pleas to some charges are GUILTY and to other charges are NOT GUILTY and,

(*a*) *Such mixed pleas occur when there are no alternative charges in the Charge Sheet, use Record Form C below.* (*RP* 37(*A*).)

(*b*) *Such mixed pleas occur in a set of two or more charges laid in the alternative, see RP* 37 (*A*) *and fn* 2 *as to discretion of Court,* (*i*) *to try the accused on all such alternative charges as if he had pleaded Not Guilty thereto, or,* (*ii*) *to record the pleas as the findings of Court. After deciding between* (*i*) *and* (*ii*), *Court will proceed under foregoing instrs as may be appropriate to result of its decision. See MML p* 744 *Instrs* (2).

3. *As to responsibility of President to accused see RP* 59, 60(*C*) ; *powers and duties of JA see RP* 103 ; *duty of Prosecutor see RP* 60(*A*) (*B*) ; *duty and privileges of accused and Defending Offr see RP* 60(*C*), 87(*C*), 91, 92 ; *swearing and withdrawal of witnesses from Court see RP* 81, 82 ; *questioning of accused see RP* 80, 87(*C*), 92(*B*), *and of witnesses see RP* 83-85 ; *calling or re-calling of witnesses by Court, etc, see RP* 75-79, 86, 116 ; *use of Summary of Evidence at Trial see RP* 17(*E*) *fn* 6 ; *and responsibility of JA or Pres to record proceedings see RP* 94, 96.

RECORD FORM B—PROCEEDINGS ON PLEAS OF GUILTY TO ALL CHARGES.

B1. The President or JA, if any, complies with RP 35(B) by explaining to the accused the nature and meaning of the charge(s)(1), and that on his plea of Guilty there will be no regular trial but merely a consideration of the sentence to be awarded after he has been given an opportunity to make a statement in reference to the charge(s), call witnesses as to character and make an address in mitigation of punishment.(2)
(1. *RP 35 fn 3.* 2. *MML p 54 para 47.*)

B2. President to accused : The Court will now receive any statement you desire to make in reference to the charge(s).(1) If it appears from your statement that there are circumstances which indicate that you do not understand the effect of the plea of Guilty(2), or which show provocation or extenuation in respect of which in your interest the witnesses for the Prosecution should be examined(3), we shall advise you to change your plea to Not Guilty. In making a statement you will not be sworn or subject to cross-examination ; and anything you say will not be used in evidence against you after you change your plea. If, however, it appears to the Court that your statement affects only the amount of punishment to which you are liable, you will not be advised to change your plea and you will be given an opportunity later to prove your statement by sworn testimony, if you so desire.(4)

President to accused : Do you wish to make a statement ? Ans.....(5)
(1. *RP 37(B).* 2. *RP 37(D) fn 6.* 3. *RP 25(B) fn 5 para 3, MML p 54 para 47.* 4. *See para E3 of Record Form E.* 5. *Statement, if any, recorded per Notes.*)

B3. The Court considers the accused's statement.(1) The Court decides (not) to advise accused to change his (their) plea(s) of Guilty to Not Guilty on.....charge(s). The accused is (are) so informed, and he (they) change(s) his (their) plea(s) on.....charge(s). Part I of the Schedule is amended accordingly.
(1. *Court may be closed to consider the statement. Delete whole or part not used.*)

B4. On the charge(s) to which the plea(s) of Guilty is (are) not changed the President records finding(s) of Guilty in Part I of the Schedule.(1)
(1. *RP 35(B). If any plea(s) is (are) changed, use Record Form C or D as appropriate.*)

B5. The Summary of Evidence is marked Ex....., initialled and read aloud by the President.(1)
(1. *If there is no Summary, or if it is inadequate, comply with RP 37(B). If there is any evidence inconsistent with any plea standing as Guilty, Court will advise accused to change such plea and, if changed to Not Guilty, try such charge(s) by use of paras D1 to D8 inclusive of Record Form D on p 3. RP 37(D).*)

B6. The accused having been found Guilty on one or more of the charges, the proceedings are concluded by using Record Form E on p 3.

RECORD FORM C—PROCEEDINGS ON MIXED PLEAS OF GUILTY AND NOT GUILTY.

C1. As to the charges on which accused pleaded NOT GUILTY the trial is continued by using paras D1 to D8 inclusive of Record Form D on p 3 before proceeding with C 2.(1)
(1. *RP 37(A) (2).*)

C2. The charges on which accused pleaded GUILTY are read to him (them) again, and the trial is continued by using paras B1 to B5 of Record Form B above.(1)
(1. *Under B5 such parts only of the Summary of Evidence are to relate to the charges dealt with under C2. If any plea is changed to Not Guilty, trial thereon proceeds by complying with paras D1 to D8 inclusive in Record Form D on p 3 and making an appropriate record thereof on a separate sheet.*)

C3. The accused having been found Guilty on one or more of the charges, the proceedings are concluded by using Record Form E on p 3.

PRESIDENT OR JA WILL INITIAL ALL DELETIONS AND ALTERATIONS.

Pin here Loose Sheets of Record.

RECORD FORM D—PROCEEDINGS ON PLEAS OF NOT GUILTY TO ALL CHARGES.

D1. President to accused : Do you wish to apply for an adjournment on the ground that any of the rules relating to procedure before trial have not been complied with, and that you have been prejudiced thereby, or on the ground that you have not had sufficient opportunity to prepare your defence ? Ans. no.....(1)
(1. *If "yes", see RP 39(A) for procedure. Statement or evidence, if any, is recorded per Notes.*)

D2. The Prosecutor makes (no) opening address.(1)
(1. *RP 39(B), 60(A) (B), 90, 92(C) (D). Record address per Notes, subject to RP 95(C).*)

D3. The evidence for the Prosecution is taken.(1)
(1. *RP 39(C), 114, KR Can 555. Record evidence per Notes. As to Prosecutor giving evidence himself see RP 39(D) (E).*)

D4. The Prosecution is closed.(1) ~~The Defending Offr submits that the evidence for the Prosecution does not establish a prima facie case against the accused on the.....charge(s).(2) The Court is closed, and considers the submission.(3) The Court is re-opened, and the President announces that the submission is disallowed on the.....charge(s), and allowed on the.....charge(s), and that, accordingly, the trial will proceed on the former, but the accused is (are) found Not Guilty on the latter charge(s).(4)~~
(1. *Delete remainder of this para, if submission not made.* 2. *Arguments on submission, answer and reply are recorded per Notes.* 3. *RP 40 fn 1. See MML p 72 paras 12-14 and p 81 para 42.* 4. *Delete part not used. If accused acquitted on all charges, use second alternative in para D8.*)
NB : If trial proceeds, accused must be allowed great latitude in making his defence, and the Court should not stop his defence solely on ground of irrelevance. (*RP 60(C), 114, 115.*)

D5. President to accused : You will now proceed with your defence.(1) You may, if you wish, give evidence yourself on oath as to the facts or your character or both, in which case you will be subject to cross-examination.(2) You may, however, make a statement without being sworn, and you will not be subject to cross-examination.(3) But a statement which could have been made on oath will not carry with the Court the same weight as sworn testimony.(4) You may call witnesses in your defence and as to character, whether you give evidence or make a statement or do neither.

President to accused : Do you wish to give evidence yourself as a witness, make a statement, or do neither ? Ans. He give evidence as a Witness. Do you intend to call witnesses on your behalf ? Ans. yes. Are they witnesses as to character only ? Ans. no
(1. *RP 115.* 2. *RP 40(A), see 80(D).* 3. *RP 40 fn 10.* 4. *RP 40 fns 2, 9.*)

D6. Consequent on the answers recorded in para D5 the appropriate procedure for the defence is followed.(1)
(1. *RP 114, 115, 116. For procedure see Notes on back of Convening Order. CF A95. Evidence for accused as to his character should, if in his interest, be given before the finding. See RP 46(A) fn 1, 86(C). Note the further opportunity in para E1 of Record Form E. Record per Notes addresses, statement, evidence and any summing up by the JA under RP 42, 103(e).*)

D7. The Court is closed to consider the finding(s).(1) The finding(s) of the Court is (are) recorded in Part I of the Schedule.(2) The Court is re-opened.
(1. *RP 43, 117(A). See Notes in Part I of Schedule.* 2. *RP 44(A).*)

D8. The President announces the finding(s), if any, of Not Guilty, and states to the accused that the finding(s) of the Court on the Second charge(s), being subject to confirmation, will be promulgated later.(1) ~~Or, The President announces that the accused is found Not Guilty on all charges and is to be released forthwith, and that the proceedings are accordingly terminated. Part I of the Schedule is dated and signed.(2)~~
(1. *AA 54(3) (6). RP 45, 120(A).* 2. *AA 54(3), RP 45, 117. This alternative announcement is not applicable when there are pleas of Guilty outstanding and dealt with under Record Form B or C.*)

D9. The accused having been found Guilty on one or more of the charges, the proceedings are concluded by using Record Form E below.

RECORD FORM E—PROCEEDINGS ON CONVICTION BEFORE SENTENCE.

E1. President to accused : Do you wish to give evidence yourself or to call any witnesses as to your character ?(1)
Ans. no.
(1. *If evidence has already been given by accused or his witnesses as to his character, delete this para. RP 37(C) fn 4, 46 fn 1. Accused and witnesses are sworn. Evidence recorded per Notes.*)

E2. The Prosecutor produces Statement(s) as to Character and Particulars of Service(1), and certified true copy (copies) of Conduct Sheet(s)(2), purporting to refer to the accused, which he submits to the Defending Offr for examination, and then to the Court for admission in evidence. The Court is satisfied that these documents refer to the accused, because (i) they purport to be signed in the manner required by AA 163(l) (g) (h), and (ii) they purport to refer to (a) soldier(s) having the same number, rank, name and corps as the accused. Admitted in evidence and marked Ex B. and Ex C. respectively.(3)
(1. *MFB 355 or AFB 296.* 2. *MFM 6.* 3. *RP 46, KR Can 558. If above documents not produced, see RP 46 fn 1 para 1.*)

E3. President to accused : Do you wish to address the Court on the Statement(s) and Conduct Sheet(s), and in mitigation of punishment ?(1) Ans. yes.(2)
(1. *RP 37(C), 46(D).* 2. *Address, if any, recorded per Notes. Court should permit accused or his witnesses to prove on oath anything here or previously stated which would affect the amount of punishment. RP 37(F) fn 7.*)

E4. The President states that the Court is closed to consider the sentence, and that the sentence to be awarded by the Court, being subject to confirmation, will not be announced, but will be promulgated later, and the proceedings in open court are accordingly terminated.(1)
(1. *AA 54(6), RP 120(A).*)

E5. The Court considers the sentence.(1) The President records the sentence in Part I of the Schedule, which is dated and signed by him ~~and the JA, if any.~~(2)
(1. *When several accused tried separately see RP 71 (D). One sentence only, comprised of the punishment or punishments laid down in AA 41, 44 and its proviso, is to be awarded to cover all charges in all charge sheets on which accused found guilty. RP 48. As to sentences see AA 44, 138, 182, RP 46-50, 69, 118, 119(A), KR Can 308, 330, 563-566, Overseas RO 309, 2323, MML p 60, 757-759. As to sentences assigned for civil offences by the law of England see AA 41(5), MML p 130. When accused already under sentence of imprisonment or detention see AA 44(18), 68(1), KR Can 564.* 2. *RP 50. As to release from arrest by Confirming Offr see KR Can 567. As to assembly and disposal of record after trial see Instrs on back of Convening Order.*)

PRESIDENT OR JA WILL INITIAL ALL DELETIONS AND ALTERATIONS.

CHARGE SHEET

The Accused, B74037 Private Edward Story Fee, 3 Cdn Base Rft Bn, 1 Cdn Base Rft Depot, a soldier of the Canadian Army Overseas is charged with:

First Charge
Army Act
Sec 10(4)

WHEN ON ACTIVE SERVICE, BREAKING OUT OF BARRACKS

in that he

in the Field in Italy on 26 Jun 44 whilst a defaulter did break out of barracks.

Second Charge
Army Act
Sec 8(2)

WHEN ON ACTIVE SERVICE, USING INSUBORDINATE LANGUAGE TO HIS SUPERIOR OFFICER

in that he

in the Field in Italy on 26 Jun 44, upon being ordered by Captain A.W. Roy to leave the room, said to the said Captain, "No God damned Captain can put me under arrest when the MO says I'm sober," or words to that effect.

In the Field,
7 Jul 44.

(W.W. Mathers) Lt. col.,
Commanding Officer,
3 Cdn Rft Bn, 1 CBRD.

TO BE TRIED BY FIELD GENERAL COURT MARTIAL

In the Field
8 July 1944

F.W. Haldenby, Brigadier
Commanding 1 Cdn. Base Rft Group

K.E. Smith Major

FIELD GENERAL COURT-MARTIAL

(Whether the accused to be tried is under his comd or not, a FGCM may on application to him be convened by any offr of Cdn Army Overseas, or of any other force if authorized in law, in immediate comd of troops on active service, subject to RP 105(C) and restrictions imposed by appropriate authy. AA 49, 50, RP 104-107, 114. As to the duties and privileges of the Convening Offr in dealing with the application see MML Chap V paras 20 and 23, RP 87(B).

There should be a separate Convening Order for each person to be tried separately by the same Court. RP 71(C), 109. As to separate charge sheets see RP 62, and as to separate trial on charges in the same charge sheet see RP 108. As to two or more accused charged jointly see RP 16, 109.

As to reasons for showing (a) permanent or confirmed rank, and (b) appmt, A/rank or A/appmt, if any, see AA 182, 183, fns, KR Con 308, 328, 330.)

ACCUSED.

Number.	(a) Prmnt R.	(b) Appmt, A/R or A/Appmt.	Full Christian Names.	Surname.	Unit.
B74037	Pte		Edward Story	FEE	3 Bn 1 CBRD

CONVENING ORDER.

1. Whereas complaint has been made to me, the undersigned, that the person(s) named above as the accused, being subject to military law, has ~~(have)~~ committed the offence(s) set forth in the Charge Sheet(s) attached and on (*date*) 8 Jul 44 endorsed by me, ~~(or by an offr of my staff for me)~~, "To be tried by Field General Court-Martial". Ewtl

2. And whereas I am of opinion that it is not practicable that such offence(s) should be tried by an ordinary General Court-Martial; ~~(and that it is not practicable to delay the trial for reference to a superior qualified offr.)~~ Ewtl

(*Delete part in brackets when not required for compliance with RP 105(C).*)

3. I hereby convene a Field General Court-Martial to try the said person(s), and to consist of the Offrs appointed or detailed hereunder.

~~4. I am unable to appoint (a) three Offrs to form the Court, (b) a Fd Offr as President, for the reasons I have attached hereto.~~ Ewtl

(*AA 49, RP 106(B), 107(A). Delete the whole or part, if not applicable.*)

~~5. I also appoint as Judge Advocate thereat the Offr mentioned hereunder.~~ Ewtl

(*RP 106(E). Delete, if none appointed.*)

PRESIDENT.

(Rank.)	(Must be named. RP 106.)	(Unit.)
Major	K.E. Smith	8 Bn 2 CBRD

MEMBERS.

(Rank.)	(Named or detailed. RP 106.)	(Unit.)
Capt	D.W. Creelman (CIC)	3 Bn 1 CBRD
Lt	C. Gagnon (CIC)	1 Bn 1 CBRD

WAITING MEMBER.

(Rank.)	(Named or detailed, if any. RP 106.)	(Unit.)
	Capt or Lt to be detailed by CC 2 Cdn Reallocation Centre Ewtl	

~~SUBSTITUTES~~.

(Rank.)	(Must be named, if any. RP 106.)	(Unit.)

On Active Service in the Fd

in ITALY (*Country.*)

Date 8 Jul 44

Ewt Haedenby (Signed personally. RP 105 fn 2.)

(E.W. Haldenby)

Brigadier (*Rank.*)

Commanding 1 Cdn Base Rft Group

Convening Officer.

CONVENING OFFR WILL INITIAL ALL DELETIONS AND ALTERATIONS

4/38A (AFAS8 (In lieu of AFA3) 40/P & S/1697 14/31)

(*See overleaf for oaths and notes for use on trial.*)

Lieut. C. Gagnon, a detailed member of this court, was Not available ∴ Waiting member. Lieut. A.J. MacRae 2cdn Re. Am. Center was detailed to act in his place.

K. E. Smallwood
Recs

H E Southampton

.. Medical Officer's Certificate ..

I hereby certify that I have this day examined

No. A.24.37. Rank. Pte. Name. F.F.F. ..... F.S. .....

and in my Opinion is fit to undergo trial by

Court Martial

Date July 11/44

W E Southampton
(Medical Officer)

Evidence for the Prosecution. PAGE 1.

FIRST WITNESS. Having been duly sworn, states:

Ann. Capt. A. H. Day of 3 Bn 1 C.I.S.R.O. On the 26 June last at about 1930 hrs. I was in my office at Canada Barracks. The accused was brought into my office, (Pte Edward Stacey Fee, whom I recognize) by a regimental policeman. The Regimental policeman handed me a paper signed by Capt Perfect, M.O. of 3 Bn. 1 C.I.S.R.O. This paper stating that the accused, Pte Fee was fit for duty, is read to the court and marked Ex A.

Whereupon this time the accused was standing rigidly to attention in my office with a cigarette in his mouth. His face was very red. I said to him: "Well, Fee, are you getting in trouble again?" He replied in a facetious manner: "Sure trouble." I got up and went closer to him and noticed that he smelled strongly of wine. His eyes were bloodshot and there was dried blood-stains on his shirt. Despite the M.O's paper (Ex A) in my opinion the accused was drunk. I ordered the R.S.M. to take him to the guard-room and the accused immediately began to protest, and said, "No God Damned Captain is going to place me on close arrest when the M.O. says I'm sober," or words to that effect. I again told Pte Fee, the accused that in my opinion he was drunk and in any event he had been placed under close arrest and only the C.O. could release him and he would decide that in the morning.

Pte Fee then began said "I won't go!"
I told the R.P. to take him out of my office.
The R.P. tried to remove Pte Fee. Pte Fee
shook him off saying "I won't go!"
I then went out of the office and met C.S.M
Toussaints, A/R.S.M of 3 Bn, C.B.R.D. I ordered
the A/R.S.M to have Pte Fee removed to the guard
room. C.S.M Toussaints then went to my
office & took charge of the situation &
marched the accused to the guard-room.
The following day on checking this case
I found from records in my custody, that
Pte Fee was actually at the time of the
offence a defaulter. That is all, Sir.

Cross-Examined by the Defence.

Q1. Did you at any time during the above proceedings
threaten to throw the accused out of your office?
A1. After No, but after the accused became abusive &
refused to go I said "Get out of here!" or I'll put you
out!" or words to that effect.

Q2. Did Pte Fee use abusive language before you made
the above statement to him?
A2. I made the above statement (A1.) after the accused refused
to go. There were my last words unto the accused
before I went to get C.S.M Toussaints.

Q3. Where did you find C.S.M Toussaints?
A3. C.S.M Toussaints at the door of his office which
is two doors away from my own office. He went
to my office together, the C.S.M entering my office first.

Q4. What was there about the accused that made you form
the opinion he was drunk?
A4. The fact that after he entered my office he was standing
at ease with a cigarette in his mouth, his face was
very red, his eyes were blood-shot, his appearance
was disheveled & I could smell a strong smell of wine.

160.

Q: Was the accused thick of speech, did he stagger, or did he require assistance?

A: He did not stagger or require any assistance but when he spoke his voice was boisterous

(RP 83 B complied with)

LT. J.K. PLUMBTREE having been

SECOND WITNESS for the prosecution: duly sworn states;

I am Lt. J.K. Plumbtree, assistant adjt. of 3 Bn 1 C.B.R.D at Thetford on 26 June 44. I now recognize No 72. the accused. At about 1900 hrs 26 Jun 44 I was in the adjutants office when the accused came in accompanied by an R.C.P. The accused had a slip of paper. that he had received from the M.O. The adjt. went over and spoke to the accused. The adjt then ordered the accused placed under close arrest. The accused asked Capt Kay (Adjt) on what grounds & Capt Kay told the accused that in his estimation he was drunk. The accused then asked to see a higher authority because saying "the God Damned Captain will put me under arrest when I have a statement from the M.O." The adjutant told the accused to leave the room and the accused refused to do so whereupon Capt Kay threatened to throw him out. The adjutant (Capt Kay) then left the room and went & procured the R.S.M. who came and took the accused away.

Cross Examined by the Defence

Q. Who handed the slip of paper to Capt Kay (Adjt)

A. The accused.

K.C.S.

Q2. Did Capt Kay (Adjt) go over to the accused before he questioned him?
A2. He first spoke to the accused from his desk and then went over to them.

Q3. What did the Adjt say to the accused?
A3 I do not know.

Q4. How did the R.S.M. come into the picture?
A4 The Adjt. left the room and sent the R.S.M. in.
(RP 83 B complied with)

THIRD WITNESS for Prosecution. Lt A.D. Egan 3 Bn. 10 B.K.R.
- after having been duly sworn states;
I am Lt A. D. Egan 3 Bn 10 B.K.R. On 2nd June 44 I was Orderly Officer of 3 Bn 16 B.K.R. which required me to attend the Adjutants office throughout the day. At approx 1500 hrs the accused whom I now recognize came into the Adjutants office bearing a note which the accused said was from the Unit Medical Officer. The accused said he wished to go down town. An argument ensued between the adjutant and the accused. The adjutant (Capt Kay) then sent for the R.S.M. The Adjt ordered the accused to be placed under arrest. The accused then protested shouting "No God Damn Captain will put me under arrest for being drunk when the M.O. says I'm not drunk"
The accused was then led from the office shouting and protesting by the R.S.M. That is all, Sir.

Cross Examined by the Defence
Q1. Who handed the note to the Adjutant?
A1 I do not know.

Q2. How did the Adjt. direct the order to put the accused under arrest?

A2. As far as I can remember it was to the R.S.M.

Q3. How did the accused act up until the time he was ordered under arrest?

A3. He had a friendly and jovial manner.

Q4. In your opinion did the accused have any signs of lack of control due to previous indulgence?

A4 He showed signs of having had something to drink and his voice was somewhat thick but he was steady on his feet.

Q5. Do you recall the adjutant threatening to throw the accused out?

A5. No.

Q6. Do you consider the adjutants attitude to have been provocative?

A6. No, but he was abrupt in his speech.

(RP 83 B complied with)

FOURTH WITNESS for the prosecution B 127867 L/Cpl Thorne, R.W. after having been duly sworn states;

I am B 127867 L/Cpl Thorne. R.W. of 3 Bn. 1 C.B.R.D. member of 3 Bn. Regimental Police. On the night of 26 June 44 I was on duty at 3 Bn. Guard Room. My duty to call the roll of the defaulters at 1800 hrs. On doing so Pte Fee failed to answer his name. At about 1830 Pte Fee was brought into guard room by a member of R. of C. Tps boy in handcuffs.

Cross Examined by Defence

Q1 Are you sure you called Pte Fee's name at defaulters parade?

A1. Yes, sir, his name was on the roll & I called it.

(RP 83 B complied with)

KEd.

FIFTH WITNESS for the prosecution H32053 Cpl. BEAMAN P.A.
having been duly sworn states;

I am H32053 Cpl. Beaman P.A. a member of 1/1 6 dn. L of C. Pls. Coy stationed for duty in Luelling. I was on patrol in Luelling at about 1830 hrs on 26 June 44 when a civilian called me into a café where I observed a soldier, whom I now recognize as the accused. He appeared to be in a drunken condition and I asked him to accompany me which he did. I delivered him to the guard room at 3 Bn 1 C.B.R.D. turning him over to N.C.O. i/c the guard. That is all, Sir.

Cross Examined by the Defence

Q1. What appearances of the accused made you consider him drunk?

A. He smelled strongly of alcohol, was unsteady on his feet, his clothes were in disarray and his speech was thick.

(R.P.83 B complied with)

Evidence for the Defence.

FIRST WITNESS for the Defence B74037 Pte. Fee, E. S.

having been duly sworn states;

I am B74037 Pte Fee E.S. 48th Highlanders of Canada, at present on strength of 3 Bn 1 C.B.R.D. in No13 Coy. I was a defaulter as of 26 Jan 44 and was training with my platoon. Sgt Woods my platoon corporal took me out of camp to a river just south of camp to have a bath and wash clothes. We were broken off at the river. ~~approximately~~ Hart came to me that we were allowed to return on our own to Camp on completion bath and washing of clothes. I did not return until I was brought in by the Pro from Casilino. While out of camp I had an accident and my nose was broken. I lost a great deal of blood. I went to ~~the~~ a café to try and get assistance to stop my nose from bleeding. My friend was not at ~~the~~ a café. The pro took me back to camp. I had been drinking previous to ~~my accident~~ ~~nothing~~ ~~though~~ my accident. My nose was broken ~~during~~ from a blow received in a place where I was drinking although I myself was not involved in the argument that caused the blow. On arriving at the guard room at 3 Bn 1 C.B.R.D. I enquired of an R.T. why I was placed under close arrest. I was told it was because I was drunk. I then asked to ~~be~~ paraded to the Medical Officer and I was ~~be~~ paraded to the Medical Officer after a little while. The M.O was taken to him after a little while. The M.O was the Regt. M.O for 3 Bn 1 C.B.R.D. I told him I was on a charge for drunkeness and asked him if he considered I was drunk. He said words to the effect that I was not

drunk. Sthen asked him the M. O gave a note to the R.P. who was escorting me. and we proceeded to the Adjutants Office.

The R.P. gave the adjutant the note as soon as we arrived at the Adj^ts Office. The adjt. then read the note and then said "Put the man under close arrest" I asked the adjt. why he ordered me under close arrest and I tried to explain to him the purpose of my enquery but he gave no explanation and refused to listen to me. He then ordered me to go out. I continued to try and give him my story. He came from behind his desk and said "I'll throw you out!" which annoyed me. I said "Take your paps off and then than we can." I then left the office with the escort, turning left down the hallway and proceeded to the East end of the bldg. We then proceeded towards the Guard Room meeting W/R.S.M Townsend on the steps of the Otlawa Building on the way to the guard room. W/R.S.M called me aside and said "Do you trust me Lee?" I said "Yes, Sir." We continued on our way to the guard room.

I have no recollection of having addressed the words mentioned in the second charge. As far as I can say I was sober and in full possession of my ~~senses~~ faculties when I was in the Adjutants office.

Cross Examined by the Prosecution

Q. What time was this marching parade?

A. In the morning.

Q2 Did you have any lunch?
A2 Yes, in the place where we were drinking

Q3 Where is the place you were drinking?
A3 In the outskirts of Avellano.

Q4 Did you pass this place en route to
washing parade?
A4 No.

Q5 Did you return by a direct route to camp?
A5. No.

Q6. How long had you been on C.B.?
A6 Five days.

Q7. Did you attempt to return for Defaulters Parade?
A7. Yes, sir. but my nose was broken and
was bleeding profusely

Q8. What time did you receive your broken
nose?
A8 At about 1715 hrs.

Q9. How much further from the scene of the accident
to the Regt. H.Q. than to the café.?
A9. I would say it was approx. the same distance.

Q10. When you were drinking, were you alone?
A10 No, sir.

(RP 83 B complied with)

KB

Second Witness for the Defense B131187 Pte Armstrong, C.E.

having been duly sworn, states
Sam: B131187 Pte Armstrong C. E. of 3 Bn
1 C. B. R. D. a member of regimental police. On
the evening of 26 June last I was the escort
in charge of the accused, whom I now
recognize. I took Pte Fee to the unit
M. O. and the M. O. said he did not consider
the accused as drunk as long as he was
fit for duty. He stated the accused was
fit for duty. The M. O. gave me a slip to
deliver to the Adjt to clear Pte Fee. ~~Pte Fee~~
I took the accused into the Adjts office.
I handed the slip of paper to an officer
~~who~~ who in turn handed it to the
adjutant whom I know now as Capt Kay.
He looked up and said "Pte Fee, I see
you're back again" and Pte Fee said
"Yes, Sir" Then the adjutant said "The
M. O says that you are not drunk, but
I claim you're definitely drunk" The
adjutant then ordered me to place Pte Fee
under close arrest and take him back
to the guard room. Pte Fee said "I refuse
to go back to the guard room under the
circumstances" ~~The Adjutant~~ He endeavored
to explain his attitude but the adjutant would
not listen. I was again ordered to take Pte
Fee out. The adjutant said that if Pte
Fee did not go out he would throw him
out, or words to that effect. I turned to go
to the door and the adjt got up from his
desk and walked over to Pte Fee. I heard
Pte Fee say "I would not listen to officers"

I was present in the room but I did not hear the accused utter the words which he is alleged to have stated in the second charge brought against him. The charge and which have you been read to me.
Adjutant walked past Pte Fee, and the door and down to the R.S.M's office. He returned with A/RSM Toussaint who asked Pte Fee what the trouble was. The accused explained to the R.S.M who offered to take him away and fix him (the accused) up.
The accused, myself and A/RSM Toussaint left the Adjutants office, turning right and proceeding to the entrance of the Guard room. A/RSM then advised Pte Fee to proceed to the guard room with me. I remember the A/RSM saying "Do you trust me Fee?" and Fee answering "Yes, Sir".
When Pte Fee was before the Adjutant he was quite peaceable but when the Adjutant spoke to him telling him he was under arrest the accused appeared annoyed.

Q. Did you hear the accused say to the Adjutant "I have trouble?"
A. No, Sir
Q. Were you present all the time when the accused was before the Adjutant?
A. Yes, Sir.

Cross Examined by the Prosecution.
Q. Could I have been audible if you had moved to some parts of the conversation that took place in the Adjutants office
A. No.

Q. Did you hear Pte Fee say to the Adjutant "Take down your Pass and then put me on?"

A2. I do not remember hearing this said.

~~Q3. Did you see Pte Fee enter the Adjutants~~
~~office and say he was about this~~
~~application?~~

~~A3. I do not remember~~

Q3. Did Pte Fee have a cigarette in his mouth when he was standing before the adjutant?

A3. No.

Question by the Court.

Q1. Did you hear Pte Fee utter the statement "No God Damn adjutant can put me under arrest when the N.C.O. says Attention?"

A1. No, Sir. (RP 83 B complied with)

B 17077 Pte CHARETTE H.A.

THIRD WITNESS for the Defense. ~~A 7077~~

having been duly sworn states Name B 17077 Pte Charette H. A of 13 bay 3 Co 1 C.B.R.D. I know Pte Fee the accused whom I now recognize. On 20 June 44 Pte Fee & I were members of Cpl Woods platoon. On 21 June 44 our platoon proceeded on bathing & washing parade to a spot on a creek due east of Canada Barracks. Pte Fee was with us. We went down under supervision of Cpl Woods, leaving by main gate of Canada Barracks. When we arrived at the creek Cpl Woods broke us off. We were not given any instructions as to how we were to return, that is to say by forming up or individually. It was customary for those who were late finishing their washing to return to camp on their own & I returned on my own.

Cross-Examined. KBB.
Questions by Prosecution.

Q1. What time did you return to camp
A1. 1115 hrs
Q2. What time was your next parade stated for
A2. 1315 hrs.

Q3. Had the platoon been notified the next parade was at 1315 hrs
A3. Its a camp standing order.
(RP 830 complied with)

FOURTH WITNESS (Character) for the Defence. K74108 Gnr MAXWELL D.H (M.M.)
Having been duly sworn states;
I am K74108 Gnr Maxwell D.H (M.M.) Strength 5/13 Bty 3 Bn, C.B.R.D. I have known Pte Fee, whom I now recognize since Aug 4 1943. When we first landed in Sicily he came into Maletta with A Coy to which I belonged. He was with us in A Coy until we reached San Fratello Massa, north of the Marro River & went to Adrano. During all our serious combats Pte Fee proved himself to be an exceptionally good soldier, faithful in the execution of his orders often carrying out these orders under great difficulty. I have never known Pte Fee to fail in any job he was ordered to do.
(RP 83 B complied with)

FIFTH WITNESS (Character) for the Defence. S73574 C.S.M McIntyre D.
Having been duly sworn states;
I am S 73574 C.S.M McIntyre D 5/13 Bty, 3 Bn, C.B.R.D. I know the accused Pte Fee when I now recognize. I have known Pte Fee since last August when the regiment (48th Highlanders (Canada)) was detailed to Sicily and have known him only as a good soldier. Any job he was ever tasked to do was done willingly and courageously. Whenever

6. He was required he was always on hand to support his Comrades & has never slacked on his duty.

(RP B. complied with)

Reg. 3 Bn. 19.20
26 Jan 44

Pte Lee E S
B 46037

Reported absent
from camp as above time &
date. Person obtained
with drunken
He is fit for duty.

W E Reeves
Lt
3 Bn
1 C.B.R.D.

Ex. "A"

W E Reeves Lt

Prosecution Closing address in the case of 874037 Pte Fox C.S.

First charge. — The main issue seems to be receiving orders given to the platoon by the corporal in charge. The accused has stated that he did not hear the orders himself. Therefor it is impossible to know what the orders were. However I feel that it is not only safe but reasonable to assume that the platoon was not broken off for the day. As we know it from the evidence given by the accused, he was admittedly doing something he knew was wrong. He made no effort to return from the regular afternoon parade, and therefore it may be stated that he used the knowing parade as a mere as stratagem to break out of barracks at least for the afternoon of the day involved. The only defence put up is a technicality at the most, and as it has been proved that the soldier was absent from barracks outside ans C.B. I feel sure that the charge has been proven, and therefor the accused is guilty as charged.

As the accused is one supposed to be, ignorance cannot be pleaded and I feel, and I ask, that justice be carried out and that the punishment be given which the accused under Military Law deserves.

Third charge — Most of the evidence heard is conflicting. Many points have been brought out but only one stands. This one point has not been contradicted, except by the accused, who, as he pleads not guilty, must do so. The witness for the defence states that he did not hear the accused say the words as laid down in this charge. He does not state that the accused did not say them. Therefore, I claim that with two reliable witnesses stating that they definitely heard the accused make such a statement and only one, and that the accused himself, saying that he did not, that the court must give that decision as guilty of the charge as laid. It is up to the court to say, after considering the circumstances surrounding the case, what it believes right and just but I request that the one unescapable fact has been proven and that fact is that the accused did use insubordinate language to his superior officer.

H Grant
Capt.

Sigc 17

Defending Officer's Address

In the Case of B74037 Private Fee, E. S.

FIRST CHARGE:

The accused, under this charge, must be proved to have "quitted barracks at a time when he had no right to do so." (M. M. L., P. 436, Notes to Sec. 10, A. A) - (Note 4). I contend that it has been amply shown in evidence that the accused did not "quit barracks" without right. On the other hand, he left Canada Barracks under the supervision of a superior officer when it was proper to do so. His remaining out of camp without leave is not being charged or tried by this Court, since the charge is laid under A. A. Sec. 10. I respectfully submit that this charge is not proved.

SECOND CHARGE:

This is a very serious charge and calls for careful scrutiny and thoughtful deliberation on the part of the Court.

Generally as to the evidence adduced by the prosecution witnesses - there is disagreement on small points, due to the unusual nature of the Adjutants interview with the accused and the confusion which existed. The evidence of Capt. Roy as the one who is alleged to have been affronted is necessarily the story of a witness who has a grievance and is not comparable to that of an independent witness like Pte. Armstrong, the R. P. escort. In his belligerent mood, he likely saw things in a distorted light. When the accused entered his office, he was not received normally - as visitors should be received. Nor was he given an opportunity to state his

and he didn't get any answers to the legitimate queries which he proposed to the Adjutant. Instead, the Adjutant approached the subject with a bias or prejudice, made an opening remark which was bound to irritate a man who possesses any human sensitivity, declared bluntly that he disregarded the written opinion of a medical officer who was competent to judge the physical condition and fitness of a soldier, stated that he deemed the accused drunk and ordered him to be escorted to the Guard-room under close arrest. All the witnesses agree that the accused was peaceable, jovial and friendly - and not the least bit boisterous - upon entering the room and that he only became irritable and enraged upon being charged for an offence, ~~upon~~ of which the M.O had, ~~taught~~ ~~attempted~~ to clear him by forwarding a chit to the Adjutant. The R.P. was ~~also~~ at fault, too for ushering a man in a bloody, ~~bedraggled~~ bedraggled condition into an Adjutant's office, when there was no need for a personal attendance by the accused. The Adjutant was lacking in fairness and courtesy and did not accord the accused the normal protection which an officer usually provides for a private soldier - in order to safeguard against complications and stave off military offences to superior officers in heated moments. On the contrary, he "turned on the heat", made unwarranted accusations, and even approached the accused closely and threatened a physical ejection - sufficient to put the accused in fear of bodily harm. These acts constitute sufficient provocation for words and actions by the one threatened. Nevertheless, the accused kept steady and contained himself, refraining

XB/

use of resisting force. The accused seems to have remembered using some words in reply to the threat. At this juncture, we have the honest, independent evidence of Pte. Armstrong, who was present throughout the whole affair, was nearby the accused and who, if the accused had uttered the words alleged in the charge, would certainly have "picked" his ears and been shocked so that recollection would be easy. It is notable that, despite the examination questions, the cross-examination queries and the careful and painstaking checking of the Court, the witness ~~was~~ searched his memory very honestly and fairly and would not swear to having heard the accused utter any such statement as is alleged. He is positive that there were no swear-words used. In my submission, there is a strong basis - in view of this unassailable testimony - upon which the Court may be put in doubt as to the charge. In my opinion, the doubt is a strong one and must be resolved in favour of the accused.

The evidence of the Assistant Adjutant, Lt. Plumbtree, and of Lt. Egan, both prosecution witnesses, is conflicting and does not agree with Capt. Roy's in some important and obvious details, such as, the point regarding who handed over the N.C.O's chit and the proper sequence of events. Lt. Plumbtree missed several points and Lt. Egan admitted that his memory was not clear on all the facts.

~~There is no evidence that the accused was pleased.~~ In summing up, I would like to point out that there is sufficient

evidence of threats and belligerency on the part of the Adjutant and a lack of care in his handling of a man whom he considered drunk. I would also like to stress the point of reasonable doubts — those which a reasonable man might have — being resolved in the accused's favour.

M. J. Looney, Lt.
DEFENDING OFFICER.

Ex "B" K.E.Smithers

ARMY FORM B.296.

Statement as to Character and Particulars of Service of Accused.

Number.	*Rank.*	*Name.*	*Regiment (or as the case may be).*
B-74037	Pte.	Fee, E.S.	48 Highrs 3 Con Rft Bn, 1 CBRD

1. The following is a fair and true summary of the entries in the regimental and ~~squadron, battery or~~ company conduct sheets† of the accused, exclusive of convictions by a court martial or a civil court, of summary awards under section 47 of the Army Act, and of cases in which trial has been dispensed with :—

Note.—At a trial by field general court martial this summary may be compiled from the field conduct sheet.
The conduct sheet(s) mentioned should be produced in court with this statement but not annexed to the proceedings.

†See para. 477, K.R., 1940.

*The numbers herein stated should correspond with the numbers in the conduct sheets, provided offence being given to the most serious offence in each entry, and to any recognised special acts of gallantry or distinguished conduct.

Instruction.—If the charge is for drunkenness the entries for drunkenness must be stated separately and dated.

	*Within last 12 months.	*Since Enlistment.
For A.A. Sec. 15(1)	5 times	17 times.
For A.A. Sec. 40	1 times	2 times.
For A.A. Sec. 11	3 times	3 times.
For A.A. Sec. 8(2)	0 times	1 times.
For ~~.....~~	~~.....~~ times	~~.....~~ times.

~~Number of instances of gallantry or distinguished conduct.....~~

~~There are no entries in the conduct sheets of the accused.~~

2. ~~The accused has not been previously convicted, or~~

Previous convictions† of the accused by a court martial or a civil court, summary awards under section 47 of the Army Act, and dispensations with trial under section 73 of the Army Act, are set out in the schedule annexed to this statement.

3. The accused is not under sentence at the present time, ~~or The accused at the present time is under sentence for ..... beginning on the ..... day of .....~~

4. The accused has been in confinement, awaiting trial on the present charges, for 0 days in civil custody, and 14 days in military custody, making a total of 14 days, of which 0 days were spent in hospital.

5. The present age of the accused according to his ~~attestation paper~~ MBV 1 Pt I is 30 years 281 days

6. The date of his ~~attestation~~ specified in his ~~attestation paper~~ MBV 1 Pt I is 11 Mar 40

7. The service which the accused is allowed to reckon towards discharge ~~or transfer to the reserve~~ 4 years 121 days

8. ~~The accused is entitled to deferred pay or gratuity in respect of ..... service.~~

9. The accused is entitled to reckon 4 years 121 days service for the purpose of determining his pension, etc.

10. The accused is ~~in possession of, or entitled to, no military decoration or military award (or is in possession of or entitled to (state any military decoration or reward)~~). CVSM & CLASP

11. ~~(If the accused is a warrant officer.) The accused before he was made a warrant officer last held the regimental rank of .....~~

12. ~~(In the case of an officer.) The accused holds in the army the rank of ..... dated ..... and in his regiment (or corps or department) the rank of ..... dated .....~~

(51/6880) W1.11892/144 275,000 8/42 A.J.R.W.Ltd Gp.698

Schedule of Convictions by a Court Martial or Civil Court, of summary awards under Section 47 of the Army Act and of cases in which trial has been dispensed with of accused.

No ..... Rank ..... Name ..... of ..... Regiment (or as the case may be).

(INSTRUCTION—A verbatim extract from the regimental books, stating these convictions and dispensations with trial, must be inserted.)

Description of court by which tried, or status of officer disposing of the charge or dispensing with trial.	Date and place of trial, or summary award under A.A. 47, or of order dispensing with trial.	Charges upon which convicted, or in respect of which trial was dispensed with.	Sentence of the court or authority disposing of the charge, or order of the dispensing authority.	Punishment remitted.
F.G.C.M.	15 Feb 44 Field	A.A.Sec. 15(1) AWL 20 days 8 hrs 45 min	60 days Detention	13 days

I HEREBY CERTIFY that the foregoing schedule of convictions and dispensations with trial is a true extract from the regimental books in my custody.

Signed this 1 day of July 44

Capt.

1 July 44.

OC 3 Bn. 10th R.D.

13. The accused has served as a non-commissioned officer continuously, without reduction, to the present date,

In the rank of ..... years

In the rank of ..... years

In the rank of ..... years.

Date of Promotion

(INSTRUCTION—*If any matter in any of the above paragraphs cannot be stated from the regimental books the paragraphs must be struck through, except that in the case of a trial by field general court-martial the information may be collected from such sources as are available and the paragraphs corrected accordingly.*)

B-74037 FEE E.S.

No | Name | Sqn, Battery, or Company 1st | Corps C.I.C. | Date of enlistment 11-3-40 | GC Badges | Service or Proficiency Pay N/A

MFM 6 (AFB 122) 40/P&S/136 (3438)

Date of last entry in Company Conduct Sheet 16-5-40 | No and date of last drunk 16/5/40 | Period not reckoning towards freedom from extra fine N/A | Sheet No ONE | Signature OC Company, etc "G. Rennall, A/Capt" | Character

Place	Date of offence	Rank	Cases of drunkenness	OFFENCE	Names of Witnesses	Punishment awarded	Date of award or of order dispensing with trial	By whom awarded	Remarks
Field	25/1/41	Pte		A.W.L. from 2359 hrs 19/1/41 to 2340 hrs 25/1/41 A.A. Sec 15(1)	Sgt Woodard	14 dys detn.	28/1/41	Major Fletcher	Forfeits 6 dys pay FRI Forf.14 dys FRI T.F. 20 dys pay
Field	9/3/41	Pte		A.A.Sec.15(1)A.W.L. from 2200 hrs 8/3/41 to 0630 hrs 9/3/41	Cpl.Wilson	21 dys detn.	10/3/41	Lt.Col. Slack	Forfeits 1 dys underFRI 149(1)(a) Forf. 21 dys under FR&I 149(1)(5)
Field	6/8/41	Pte		A.A.Sec.8(2)using insubordinate language to a superior officer	Lt.MacIntosh Sgt.Drew Documentary	Forf.7 days pay Sec 46 AA	7/8/41	Lt.Col. Sutherland	

(PTO)

Place	Date of offence	Rank	Cases of drunkenness	OFFENCE	Names of Witnesses	Punishments awarded	Date of award or of order dispensing with trial	By whom awarded	Remarks
Field	6/8/41	Pte		A.A.Sec.40 conduct to the prejudice etc. when ordered to work did not do so.	Lt.Redick Lt.Couche	14 days C.B.	7/8/41	Lt.Col. Sutherland	
Field	16/8/41	Pte		A.A.Sec.15(1) A.W.L. from 2359 hrs 16/8/41 to 2000 hrs 19/8/41 absent 2 dys 20 hrs.	L/CplCurran	5 dys forf. of pay under sec. 46 A.A.	20/8/41	Lt.Col. Sutherland	Forfeits 3 dys pay under FR&I
Field	14/2/42	Pte		A.W.L. from 2359 hrs 14/2/42 to 0945 hrs 15/2/42. A.A.Sec.15(1)	Sgt.Latham		16/2/42	Lt.Col. Bingham	Forfeits 3 days pay A.A. 46.
Field	14/7/42	Pte		AWL from 2359 hrs 19-7-42 to 0205 hrs 16-7-42 AA 15(1)	Sgt Palmer Pte Thompson	2 days pay	16-7-42	Lt.Col. Watson	Forfeits 1 days pay FR&I
Field	9-8-42	Pte		AWL from 2200 hrs 9-8-42 to 2245 hrs 10-8-42. Total absence 1 day 45 mins. A.A. Sec.15(1)	L/C Davidson G. & Documentary	7 days pay	12-8-42	Lt.Col. W.J.Bingham	Total forf. 4 days pay. 2 dys pay under FR&I 149(1)(a) Aut Forf 2 days Total 9 days pay "J.W.B."

B-74037 FEE E.S.

No Name

Sqn, Battery, or Company 1st

Corps CIC

Date of enlistment 11/3/40

GC Badges

Service or Proficiency Pay

MFM 6 (AFB 122) 40/P&S/136 (3438)

Date of last entry in Company Conduct Sheet 12-8-42

No and date of last drunk 16/5/40

Period not reckoning towards freedom from extra fine N/A

Sheet No TWO

Signature OC Company, etc "G.Rennall, A/Capt"

Corrected

Place	Date of offence	Rank	Cases of drunkenness	OFFENCE	Names of Witnesses	Punishment awarded	Date of award or of order dispensing with trial	By whom awarded	Remarks
									~~Total~~
Field	15-8-42	Pte		WOAS AWL from 2200 hrs 15-8-42 to 0900 hrs 16-8-42 (11 hrs) AA Sec 15(1)	L/C Wells G.	1 day as punishment	11-8-42	Lt.Col W.J. Bingham	2 dys forf "J.W.B.". Aut.Forf 1 dy
Field	28 Mar 43	Pte		AA Sec 15(1) AWL from Church Parade 28 Mar 43.	CSM McDonell	7 dys CB	30 Mar 43	Major R.Burgess	
Field	8 Apr 43	Pte		AA 15(1) AWL 1 day 1 hour 20 mins. 2215 hrs 8-4-43 to 2330 9 Apr 43	L/Sgt Kent	7 dys CB	13 Apr 43	Lt.Col. W.Peffers	Forfs 2 dys p FR&I
Field	14 May 43	Pte		AA 15(1) AWL from 0600 hrs 14 May 43 until 1115 hrs 14 May 43 T.T.A. 5 hrs, 15 mins.	Cpl Loveday C.R.	2 dys pay	15 May 43	Col.L.M. Watson	2 dys pay FR&I 149(1)(c)
~~Field~~									

(PTO)

Place	Date of offence	Rank	Cases of drunkenness	OFFENCE	Names of Witnesses	Punishment awarded	Date of award or of order dispensing with trial	By whom awarded	Remarks
Field	4-6-43	Pte		AA 15(1) AWL from 0600 hrs 4 JUN 43 until 0645 hrs 4 Jun 43 (Absent 45 mins)	Cpl. Skaratt	5 dys CB	4 Jun 43	Lt.Col. W. P.Bristowe	
Field	13 Jun 43			A.A. Sec 15(1) AWL from 2359 hrs 13 Jun 43 to 2100 hrs 15 Jun 43 (Total absence 1 day 21 hrs and 1 min)	Documentary	Forfs 21 days pay FR&I 149(2)	18 Jun 43	W.P. Bristowe Lt.Col.	Forfs 2 days pay FR&I 149(1)(a)

B-74037 FEE E.S.

No Name | Sqn, Battery, or Company "A" | 48th Highlanders of Canada Corps | Date of enlistment | GC Badges | Service or Proficiency Pay | MFM 6 (AFB 122) 40/P&S/38 (3438)

Date of last entry in Company Conduct Sheet | No and date of last drunk | Period not reckoning towards freedom from extra fine | Sheet No Supplementary | Signature OC Company, etc | Character

Place	Date of offence	Rank	Cases of drunkenness	OFFENCE	Names of Witnesses	Punishment awarded	Date of award or of order dispensing with trial	By whom awarded	Remarks
Field	23-9 43	Pte		W.O.A.S.(1) Conduct to the prej. etc. in that he left his Pl.area without permission Sec. 40 A.A. (2) A.W.L. from 1600 hrs 23 Sep 43 until 0530 hrs 24 Sep 43 (Absent 13 hrs., 30 mins.) Sec. 15(1) A.A. (3) Failing to comply with standing orders i.e. being in the MATURA without a pass Sec. 11 A.A.	Sgt. Walsh L/Cpl Bernier Lt. Magee		10-10-43	Lt-col I.S. Johnston	Forfs 1 dys pay FR&I 149 (1)a, forfs 28 days pay FR&I 149(2)

(P10)

Place	Date of offence	Rank	Cases of drunkenness	OFFENCE	Names of Witnesses	Punishment awarded	Date of award or of order dispensing with trial	By whom awarded	Remarks
Field	13-1-44	Pte		W.O.A.S. A.W.L. from 1200 hrs 13 Jan 44 until surrendering to R.A.F. Police at VASTO, Italy at 2045 hrs 2 Feb 44 (Absent 20 days 8 hrs 45 mins) Sec. 15(1) A.A.	Lt.W.A. Hunter Sgt Ranney Sgt Candy R.S.M. Crossley	60 days detention Released from 25 F.P.C. at 1400 hrs on 1/4/44. 13 days remission earned. "C.A. Donaldson" D.A.P.M. 25 F.P.C.	15-2-44	F.G.C.M.	Forfs 21 days pay FR&I 149(1)a Forfs 60 days pay FR&I 149(1)b Forfs 11 days pay FR&I 149(1)(c)(i)
Field	16 Apr 44	Pte		A.A.Sec 15(1) AWL from 0800 hrs 16 Apr 44 to 0800 hrs 17 Apr 44 Absent 24 hrs	Sgt Gibson Cpl Bradley Sgt Stewart	5 dys CB	18 Apr 44	Capt D.S. Mills	Forfs 1 dys pay 149(1)(a)
Field	17 Apr 44	Pte		A.A. Sec 11 Neglecting to obey Pt I Orders (Broke curfew)	Documentary	14 dys C.B. 14 dys pay	19 Apr 44	Lt.-Col Ritchie	14 days pay FR&I 149(2)

B-74037 FEE, E.S.

No | Name | Squ, Battery, or Company | Corps C.I.C. | Date of enlistment 11-3-40 | GC Badges | Service or Proficiency Pay | MFM 6 (AFB 122) 40/PAS/136 (3428)

Date of last entry in Company Conduct Sheet | No and date of last drunk | Period not reckoning towards freedom from extra fine | Sheet No | Signature OC Company, etc | Character

Place	Date of offence	Rank	Cases of drunkenness	OFFENCE	Names of Witnesses	Punishment awarded	Date of award or of order dispensing with trial	By whom awarded	Remarks
Field	30-4 44	Pte		(1) A.A.Sec.15(1) WOAS AWL from 2145 hrs 30 Apr 44 till 0200 hrs 8 May 44.(Total Absence 7 days 4 hrs 15 mins)	Cpl Vandewater	28 days F.P. 28 days pay	9 May 44	Lt.Col. JW Ritchie	Forfs 8 days pay FR&I 149(1)a
Released from the 7 Cdn Fld Pun Camp on 1 June 1944 Sentence having expired. Remission earned under "Rules for Detention Barracks and Military Prisons" 4 days. Commandants initials "E.W.H."				(2) A.A.Sec.15(1) WOAS AWL from 0815 hrs 8 May 44 to 2130 hrs 8 May 44 thereby breaking open arrest. (Total absence 13 hrs 15 mins)	Cpl Cook Cpl Vandewater				

(PTO)

Place	Date of offence	Rank	Cases of drunkenness	OFFENCE	Names of Witnesses	Punishment awarded	Date of award or of order dispensing with trial	By whom awarded	Remarks
Field	18 JUN	Pte		A.A. Sec. 11 Neglecting to obey Unit Orders (Broke curfew)	Sgt Leclere L/Cpl Grant H.W.	7 days C.B.	22 Jun 44	Lt.Col. W.W.Mathers	

CERTIFIED TO BE A TRUE COPY FROM REGT'L BOOKS IN MY CUSTODY

A W Roy Capt

Officer Having Charge of Regt'l Books

In the case of B 74037 Pte Fee, E. S.

PLEA IN MITIGATION

The accused's service in the Canadian Army (Active) dates from the month of March, 1940, when he enlisted with the 48th Highlanders of Canada. He has been with the same Regiment ever since that time and has earned the praise of his associates and superiors for his contribution in the Field - in action.

He came overseas on August 1st, 1940, and trained with the "48th" in England until July, 1943, when he proceeded to North Africa. He caught up with his Regiment in Sicily in August and campaigned in Italy until after the Moro Crossing in January of this year. He has been decorated with the "1939-1943 Star."

Bar a number of petty charges, he has previously received heavy, disproportionate sentences - helping to kill his fighting spirit and to lower his morale.

The evidence as to his character as a soldier, his reputation in his unit, his courage and loyalty to his comrades in action, his faithfulness to orders and duty and respect for authority when he was in action ~~as is~~ will presented by two earnest soldiers who have come to testify as to his character and service and have volunteered to do so eagerly and without hesitation. Cpl. Moxwell, who himself wears the Military Medal, badge of courage and resourcefulness, came forward without request to pay tribute to the accused as a fine soldier of the line. He is not the type to pay compliments to an undeserving of praise.

I would ask the Court to investigate the accused's crime-sheet with care to determine the number of petty offences which, when added up, appear bulky - but which surely must take on the same significance

when put to the test.

The accused has shown himself to be an excellent soldier when he has a soldier's job to do. I realize that the same may not be said of his conduct when marking time in a holding unit; but due allowance must be made under those circumstances in the case of a man of action.

Thus, I would ask the Court to mitigate the accused's sentence as far as may be considered meet, in order that he may, soon again stand beside his comrades and render the services which he has demonstrated a true capacity for doing.

M. J. Lowey, Lt
DEFENDING OFFICER

morning and ordered him from the room. He refused to go and said no god damn Captain was going to say I'm drunk, when the M.O. says I'm sober. He continued in an abusive manner and repeatedly said I won't go. I then called C.S.M. Toussaints who took charge of accused and escort and took him to the guard room. At this time I was not aware that the accused was a defaulter or that he was out of barracks but was under the impression that he had been placed in arrest by our own R.P. in barracks ~~on night~~ ~~Sep 22 June 44 for some offence on Pte B~~ ~~from the 1 Can Inf D. Depot Reg.~~ ~~this contained a statement sig~~ ~~by Capt P. Bar~~ ~~and Capt Barr~~ ~~stating that Pte B~~ had escaped ~~accused~~ ~~in a safe~~ ~~by the~~ ~~the~~ ~~statement~~ ~~is attached~~ I certify that from record in my orderly the accused was awarded 7 days C.B. on the 22 June 44 by Lt Col G.S. Mathers on a charge under Army Act Sec 11 (Comg out after military custody) Thereby on the 26 June 44 was still on C.B. and was a defaulter.

A.W. Roy Capt

Summary of Evidence
in the case of B74037 Pte Fee C. S.
presently on strength of 13 Coy 3 Bn
1 C.B.R.D. Soldier in the Canadian Army
overseas, placed on active service.
By direction of the Commanding Officer the
evidence is taken on oath.

First Witness for the prosecution: Lieut. J.K. Plumbtree Assistant Adjutant 3 Bn 1 C.B.R.D. having been duly sworn states.

I am Lieut J.K. Plumbtree Assistant adjutant of 3 Bn 1 C.B.R.D., about 1400hrs June 26 1944 the accused Pte Fee whom I now recognize came into the adjutants office, escorted by an R.P. He gave a slip to the adjutant which stated that he was fit for duty signed by the Medical Officer. The adjutant went over and spoke to him and after speaking to him, he told the R.P. to put the accused under close arrest. The accused asked the adjutant for what reason he was being put under close arrest since he had a statement from the M.O. saying he was fit for duty. The adjutant said that in his opinion he was drunk. The accused then refused to leave saying that no god damn Captain was going to put him under arrest and he wanted to see somebody of higher rank, as he considered that the M.O. was senior to the Adjutant

the adjutant then told him to get out and he refused. The adjutant then went to get R.S.M. Toussaints who took the accused out. The accused had blood stains on the front of his shirt and dried blood on his face.

J. K. Hamilton
Lieut J. K. Hamilton.

The accused declines to cross examine the witness at this time.

2nd Witness for the prosecution

Lieut A.D.Cgan 4 Coy 3 Bn 1 C.B.R.D. having been duly sworn states.

I am Lieut A.D. Cgan, on the 26 of June 1944, I was Bn orderly officer. At approximately 1800 hrs on this date, the accused entered the adjutants office, presenting the adjutant with a note from the Medical Officer stating that he was fit for duty. The adjutant said put the man under close arrest. The accused then apparently lost his temper and said no god damn Captain can put me under arrest. The adjutant then ordered the man to be removed from his office and he left shouting and protesting the M.O. said I'm not drunk you can't arrest me

A.D.Cgan Lieut
Lieut A.D. Cgan.

The accused declines to cross examine the witness at this time.

3rd Witness for the prosecution

Capt A.W. Roy Adjutant 3 Bn 1 C.B.R.D. having been duly sworn states.

I am Capt A.W. Roy Adjutant of 3 Bn 1 C.B.R.D. at about 1930 hrs 26 June 44 the accused whom I recognize was brought into my office by an R.P. He handed me a paper signed by Capt. Orfect M.O. 3 Bn 1 C.B.R.D. certifying that he was fit for duty when the accused came in my office, he stood rigidly to attention with a cigarette in his mouth; his face was very red. I assumed that he had been charged with drunkenness I said to him well Joe are you getting into trouble again. He laughed in a boisterous manner and said I love trouble. I got up and went closer to him he smelled strongly of rum and his eyes were bloodshot His nose had been bleeding and there was dried blood on the front of his shirt In my opinion he was drunk As he had apparently been previously placed in close arrest I ordered the R.P. to take him to the guard room. He then said that the Medical officer had stated he was sober I told him he was in close arrest anyway and that the C.O. would decide via the

4th Witness for the prosecution.

C 80019 Sgt McCarrie W 3 Bn Provost Sgt. having been duly sworn states

I am Sgt No 3 Currie W C 80019 Provost Sgt. of 3 Bn detention barracks. On the 26 June 44 L/Cpl Thorne called the roll for Defaulters at 1800 hrs and Pte Fee failed to answer roll call. L/Cpl Thorne immediately reported to me Pte Fee was absent. I immediately then notified the Coy of Pte Fee's absence. After my tour of duty through the camp I returned to the detention barracks and was then notified that Pte Fee was under close arrest

Sgt W. C. McCurrie

The accused declined to cross examine the witness.

The accused was cautioned as follows.

Do you wish to make any statement or give evidence upon oath. You are not obliged to say anything or give evidence unless you wish to do so, but whatever you say or any evidence you give will be taken down in writing and may be given in evidence

5th Witness for the prosecution

B 127867 L/Cpl Thorne R.N. Regimental Provost at 3 Bn 1 C.B.R.D. having been duly sworn states

I am B 127867 L/Cpl Thorne R.N. On the 26 June 44 I was on duty at 3 Bn detention barracks. My duty was to call the roll of the defaulters at 1800 hrs. On calling the roll Pte Tee failed to answer his name. At 1830 hrs. Pte Tee was brought in under escort of the Provost of 1 Cdn L of C Provost Coy. I then reported this to his Coy.

L/Cpl Thorne RN.

The accused declined to cross examine the witness at this time

The accused was cautioned as follows

Do you wish to make a statement or to give evidence upon oath? You are not obliged to say anything or give evidence unless you wish to do so but whatever you say or any evidence you give will be taken down in writing and may be given in evidence

The accused decides to make any statement or to give evidence on oath at this time

I certify that the foregoing Summary of Evidence consisting of six (6) pages was taken down by me in the presence of the accused on the 29 June 1944. I hereby certify that the provisions of R.I. 4 (c) (d) (e) (f) and (g) have been complied with.

In the Field
28 June 44

K.D. Buller Capt.
K.D. BULLER CAPT.
Officer Detailed
to take the Summary of Evidence

Additional Summary Of Evidence

in the case of B74037 Private Edward Story Fie, 48th Highlanders of Canada, presently on strength 3 Canadian Reinforcement Battalion, 1 Canadian Base Reinforcement Depot, a soldier of the Canadian Army Overseas placed on Active Service.

By direction of the Commanding Officer the evidence is taken on oath.

Sixth Witness for the Prosecution — H 32053, Cpl. Beaman P. 1 Cdn. R. of C. Provost Company.

A statement purported to be signed by this witness is read to the accused and attached hereto as Exhibit "A".

The accused does not demand the presence of this witness for cross-examination at this time.

E.S. Fee

I certify that due to the exigencies of the service and the loss of time involved the attendance of this witness cannot readily be procured.

J.K. Rumball (Lt)
Officer detailed to take the Summary.

I certify that the foregoing Additional Summary of Evidence composed of one page was taken down in writing by me in the presence of the accused and that Rules of Procedure 4 (c) (d) (e) (f) and (g) have been complied with.

J.K. Rumball (Lt)
Officer detailed to take the Summary.

KES.

LIST OF WITNESSES

in the case of

B-74037, Pte. Edward Story FEE

FOR THE PROSECUTION

1.	Lieut. J.K. Plumbtree, Ass't Adjt.	3 Cdn Rft Bn, 1 C.B.R.D.
2.	Lieut. A.D. Egan	3 Cdn Rft Bn, 1 C.B.R.D.
3.	Capt. A.W. Roy, Adjutant	3 Cdn Rft Bn, 1 C.B.R.D.
4.	C-80019, Sgt. McCurrie, W.	3 Cdn Rft Bn, 1 C.B.R.D.
5.	B-127867, L/Cpl. Thorne, R.N.	3 Cdn Rft Bn, 1 C.B.R.D.
6.	H-32053, Cpl. Beamen P.	1 Cdn. Inf. C. Provost Coy.

FOR THE DEFENCE

NIL

ENTERED IN RECORDS OF C.M.
GGG-101

D147

Correspondence to be PINNED here

Army Form A.3

Form for Assembly and Proceedings of Field General Court Martial on Active Service

PROCEEDINGS

On Active Service, this Twelfth day of February, 1944 — A Order convening the Court.

Whereas it appears to me, the undersigned, an officer in Command of 1 Canadian Infantry Brigade on active service, that the persons named in the annexed Schedule, being subject to Military Law, have committed the offences in the said Schedule mentioned.

And whereas I am of opinion that it is not practicable that such offences should be tried by an ordinary General Court Martial; *~~[illegible]~~

* Omit where Convening Officer is a Commanding Officer or is of Field Rank.

I hereby convene a Field General Court Martial to try the said persons, and to consist of the Officers hereunder named.

* Omit if not applicable.

*~~[illegible]~~

PROCEEDINGS REVIEWED
[signature] Capt
11 Apr 44
REVIEWING OFFICER, JAG BRANCH C.M.H.Q.

President

Rank	Name	Regiment
Major	F.G.C. Darton	RCR

Members

Rank	Name	Regiment
Capt.	G.A; Henderson	Hast & PER
~~Lt.~~ Waiting Member	~~W.A. Hunter~~ D.S. Snively	~~48 Highrs~~ 48 Highrs

D. C. Spry

* Must be signed personally by the Officer actually in command at the time, and all alterations to the interlineation of the Court to be initialled by him.

*Signed (D. C. Spry) Brigadier
Commanding 1 Cdn Inf Bde
Convening Officer.

D148

SCHEDULE

Number, Rank (a), Name and Unit of Accused (b)	Offence charged	*Plea	Finding, and if Convicted, Sentence (c)	How dealt with by Confirming Officer (d)
B74037 Pte. Edward Story FKE, 48th Highlanders of Canada	FIRST CHARGE A. A. Sec 15 (1)	Guilty	Guilty.	Confirmed D.C. Spry Brig
	SECOND CHARGE A. A. Sec 8 (2)	Not Guilty	Not Guilty To undergo detention for a period of sixty (60) days.	

*Question to be asked of accused, if he pleads not guilty (R. of P. 39 (A)):—
"Do you wish to apply for an adjournment on the ground that any of the rules relating to procedure before trial have not been complied with, and that you have been prejudiced thereby, or on the ground that you have not had sufficient opportunity for preparing your defence?"
Answer *(to be recorded on separate sheet if necessary)*:—

(Signed) D.C. Spry (D.C. Spry) Brigadier
Commanding 1 Cdn Inf Bde
Convening Officer (e)

(Signed) Darton (F.G.C. Darton) Major
The Royal Canadian Regiment.
President.

(a) Appointment acting rank or acting appointment, if any, to be stated in brackets after the substantive rank.
(b) Unless unavoidable, not more than three names are to be entered on one form, and in serious cases one only.
(c) Recommendation to mercy, if any, to be inserted in this column.
(d) It is not necessary that the Confirming Officer should sign his name in this column. Initials are sufficient.
(e) Must be signed by the same Officer who signs on the first page, and all alterations in the first two columns of the Schedule to be initialled by him.

Evidence and Charge Sheets (if necessary) to be PINNED here

B Certificate of President as to proceedings.

I certify that the above Court assembled on the 15th day of February 1944, and duly tried the persons named in the Schedule, and that the plea, finding, and sentence in the case of each such person were as stated in the third and fourth columns of that Schedule.

I also certify that:—

1. The members of the Court
2. The witnesses
*~~(3. The interpreter)~~
*~~(4. The officers under instruction)~~

* Omit if not applicable

were duly sworn.

Signed this 16th day of Feb. 1944

Darton Maj.
President of the Court Martial.

C Certificate in case of death sentences.

* See footnote (b) on page 762 M.M.L. 1939

I certify that the terms of *A.C.I. 370 of 1918 have been complied with.

Signed this day of 19

President of the Court Martial.

D Confirmation

I have dealt with the findings and sentences in the manner stated in the last column of the Schedule, and, subject to what I have there stated, I hereby confirm the above findings and sentences.

*~~(I direct that the soldier named in the margin be not committed to prison until further orders.)~~

* To be omitted unless penal servitude or imprisonment having been awarded, the Confirming Officer has no authority to commit to prison, or having such authority, recommends suspension.

Signed this 23 day of January 1944

D.C. Spry
(D.C. Spry) Brigadier
Confirming Officer.
Comd., 1 Cdn Inf Bde.

Promulgated and extracts taken in the case of B74037 Pte Edward Story FKE 48th Highlanders of Can.

(a) (Dated) Feb 24, 1944 (Signed) B. Lamb Lt Col 48th Highlanders of Can.

Promulgated and extracts taken in the case of

(Dated) (Signed)

Promulgated and extracts taken in the case of

(Dated) (Signed)

(a) When several cases are promulgated in one unit on the same day the Officer need only sign once.

**All printed matter not applicable to the particular Court being held should be struck out and initialled by the President.

A

Army Form A.9.

**Form of Proceedings for General and District Courts-Martial.

Proceedings of a F. G. Court-Martial held ~~at~~ on the Field on the 15th day of February 1944 by order of Brig. D. C. Spry.

Commanding 1 Cdn. Inf. Bde

dated the 12th day of February 1944

President.

Major F. G. C. Dalton RCR

Members.

Capt. G. A. Henderson H. & P.E. Regt.

Lt. D. S. Snively 48th Highs of C.

Trial of* B74037 Pte. Fee, Edward ~~Henry~~

The order convening the Court, the charge-sheet and the summary (or abstract) of evidence are laid before the Court.

The Court satisfy themselves that Lt. W. A. Hunter is not available to serve owing to Being a witness in a case before the Court Lt. D. S. Snively, waiting member takes his place as a member of the Court.

The Court satisfy themselves as provided by Rules of Procedure 22 & 23.

The accused is brought before the Court.

Prosecutor,† Lt. I. MacDonald

~~Counsel~~, or defending officer† Lt. E. H. Shuter

At 1015 o'clock the Trial commences.

The order convening the Court is read, and is marked A signed by the President, and attached to the proceedings.

The names of the President and members of the Court are read over in the hearing of the accused, and they severally answer to their names.

Question by the President to the accused. Do you object to be tried by me as President, or by any of the officers whose names you have heard read over? *Answer.* No

(N.B.—If objection is made it should be recorded, together with the decision of the Court, on a separate sheet.)

*Here insert No., Rank, full Name, Regiment, and Appointment (if any).
† Here state Rank and Name, and Regiment (if any).
‡ Qualification to be stated.

20577 W.W.4182/21 10,000 pads 12/41 K. & H. Ltd. G.67/11 Forms/A9S

B

The President, members ~~and judge-advocate~~ are duly sworn.

The following officers under instruction are duly sworn.

Charge-Sheet.

Instruction. If the accused has elected to be tried under Army Act, sec. 46 (8) the fact should be here recorded.

The charge-sheet is signed by the President, marked B 2 and annexed to the proceedings.

The accused is arraigned upon each charge in the above-mentioned charge-sheet.

Are you guilty or not guilty of the [first] charge against you, which you have heard read? *Question to the accused.*

Guilty. *Answer.*

Are you guilty or not guilty of the second charge against you, which you have heard read? *Question.*

Not Guilty *Answer.*

Are you guilty or not guilty of the third charge against you, which you have heard read? *Question.*

N/A. *Answer.*

Are you guilty or not guilty of the fourth charge against you, which you have heard read? *Question.*

N/A. *Answer.*

The accused having pleaded Guilty to First charge, the provisions of Rule of Procedure 35 (B) are here complied with.

Instruction. If the trial proceeds upon any charge to which there is a plea of "Not Guilty," the Court will not proceed upon the record of a plea of "Guilty," until after the finding on that other charge.

48th Highlanders of Canada

CHARGE SHEET

The Accused B.74037 Pte. Edward Story FEE, "A" Coy 48th Highlanders of Canada, a soldier of the Canadian Army Overseas, CMF, is charged with:

1st CHARGE
A.A. 15 (1)

When on Active Services, absent without leave,

in that he,
In the Field, ITALY absented himself without leave from 1200 hrs 13 Jan 44 until he surrendered himself to R.A.F. Police at VASTO 2045 hrs 2 Feb 44. (Time absent 20 days, 8 hrs, 45 mins)

2nd CHARGE
A.A. 8 (2)

When on Active Service, using insubordinate language to his superior officer,

in that he,
In the Field, ITALY on 6 Feb 44 when told by R.S.M. CROSSLEY and Sjt. CANDY to take his hands out of his pockets replied "I heard you"

(I.S.JOHNSTON) Lt-col,
Commanding Officer,
48th Highlanders of Canada.

In the Field (ITALY)
8 Feb 44.

TO BE TRIED BY FIELD GENERAL COURT MARTIAL

(D.C. Spry) Brigadier
Comd., 1 Cdn Inf Bde.

In the Field
12 Feb 44



MEDICAL CERTIFICATE (KR (Can) 557))

I certify that I have this morning examined No B.74037 Pte.

FEE, E.S. of 48 Highrs. of Can. and, in my opinion,

he is fit to undergo trial by Court-Martial.

Station In the Field (ITALY)

Date 15 Feb 44.

Capt. RCAMC
Medical Offr

C

Proceedings on Plea of Not Guilty.

*Instruction. (See R. P. 39 (A)) Question.

*Do you wish to apply for an adjournment on the ground that any of the rules relating to procedure before trial have not been complied with, and that you have been prejudiced thereby, or on the ground that you have not had sufficient opportunity for preparing your defence?

Answer.

No.

The prosecutor makes an opening address. Hands in a written address which is read, marked , signed by the President, and attached to the proceedings.]

Prosecutor makes no opening address.

The prosecutor proceeds to call witnesses.

First witness for prosecution.

B/4089 Sgt. Cundy S.J.

being duly sworn, ~~is examined by the prosecutor~~ states.

As Regt. Provost Sgt. of the 40th Regt of C. on the 6th Feb. at Opposite. 1130 hrs. I gave Pte. Fee an order to take his hands out of his pockets which he failed to do.

Question by prosecutor.

Q1 What took place subsequently?

A1 The R.S.M. immediately gave an order to Pte. Fee "Didn't you hear Sgt. Cundy's order. Pte Fee replied in an insubordinate manner "I heard you - so what. I am taking them out."

Cross Examined by defending Officer

Q1 What was the time lapse between your order & the R.S.M's repetition of that order?

A1 Immediately - 1 sec. after.

Q2 Which way was the accused facing when both orders were given?

A2 Facing away - turned his head to answer

2nd. Witness for the prosecution B/12533 RSM (W01) Crossley W

having been duly sworn states:- On the morning of the 6th. Feb 44 at 1130 hours I was outside the C.O's orderly Room of the 40th Regt. The accused, Pte. Fee, was under escort being marched away from the orderly rooms. Sgt. Cundy standing next to me called to the accused to take his hands out of his pockets

the accused failed to do so and proceeded some 15 paces. When I called to him to get his hands out of his pockets. He turned his head towards me and I heard him shout back, "I heard you. I am taking them out." Then there was a pause and something that was not very clear to me at the time, but I thought he said "do what". Then he took his hands out of his pockets & proceeded on.

Cross examined by Defending Officer

Q1 Exactly what was the time lapse between your order and Lt. Beldy's?

A1 About 10 paces - to give him time to take his hands out of his pockets.

Q2 When the order was given was the accused facing you?

A2 No, he was going away from me.

Prosecution Rests

D

The prosecution is closed.

Defence.

Question to the accused. Accused advised of his rights under R.P.40 & for 2.
Do you apply to give evidence yourself as a witness?

Answer. No

Question. Do you intend to call any other witness in your defence?

Answer. Yes

Question. Is he a witness as to character only? *Answer.* Yes.

INSTRUCTIONS TO THE COURT.

(i) When the answers to the above questions have been recorded, the Court will follow the provisions of Rules of Procedure 40 and 41 respecting the order of evidence and addresses which is applicable to the circumstances of the case.

(ii) All addresses by prosecutor, counsel or defending officer, whether recorded by the Court or handed in in writing will be attached to the proceedings in the order in which they are made. Any address which the accused is entitled to make pursuant to Rules of Procedure 40 (C) (iv) and 41 (A) (i) and (iii) will be similarly dealt with. Written addresses will be read to the Court, marked and signed by the President. If any person who is entitled to make an address declines to do so, a record will be made to that effect.

(Where any evidence is given for the defence.)

The evidence of the accused (and of the witnesses for the defence including witnesses as to character) is recorded on a separate page (*see overleaf*).

(Where the accused does not give evidence upon oath.)

Question to the accused. Have you anything to say in your defence?

Answer. The accused in his defence says† No statement

[hands in a written address which is read, marked signed by the President and attached to the proceedings.]

Instruction. † In this space will be recorded any oral statement or address made by the accused in his defence when he has not given evidence as a witness. (For any additional address which he is entitled to make, *see* Instructions to the Court *above*.)

D 2

The evidence of the witnesses for the defence, including that of the accused, if he is a witness, will be taken here in the order in which they give evidence.

1st. Witness for the Defence Lieut. J.C. Currelly

having been duly sworn states:- At the present time I am Pl. Comdr. No 3 Pl. Left Coy. Prior to that, for a period of about 2 weeks beginning 27th Dec. 43 I was Pl. Comdr. 7 Platoon A Coy. The accused was a Pte in my platoon. During the time I knew him, I thought extremely highly of him as a soldier. I base that on the fact we were having a very bad time - 2 or 3 days of very heavy shelling and following that we attacked San Leonardo. There were approx. 13 men left in the Pl. and we had to loophole the walls of the house. The men were so tired I could only keep about 6 of them awake in spite of the imminent danger we were in. The accused during this time, soaked extremely hard and in fact did support of the Coy holding himself. Later on in the afternoon and evening, under very adverse conditions, I sent him as a Coy. runner and during that night, he did his full share of guard & patrols. His attitude was always One of willingness and did not begrudge any work. It is chiefly from the above that I base my statement and consider him one of the most valuable men in the Pl. We then returned to San Nicola, where we spent approx. a week following which we returned to the Bde. rest area. From which place the accused was sent on 48 hours leave. The following day, I myself, left 7 Pl. and went to my present posn. in Left Coy. The last I have seen of the accused until this date.

No Cross Examination by prosecutor

Witness for the Defence: H. J. C. Currelly having been duly sworn states — "At the present moment I am Lewis Pl. Comdr - 3 Pl. Support Coy - and prior to that for a period of about 2 weeks beginning 27th Dec 43 I was a pl. Comdr - 7 Pl. A Coy. The accused was a pte soldier in my platoon. During the time I knew him I thought extremely highly of him as a soldier, I base that on the fact we were having a very bad time - 2 or 3 days of very heavy shelling and following that we attacked San Tommaso. After we had reached our objective in San Tommaso there were appx. 13 men left in the pl. and we had to loop hole the walls of a house. The men were so tired I could only keep about 6 of them awake in spite of the imminent danger we were in. The accused during this time, worked extremely hard, in fact did majority of the loop holing himself. Later on in afternoon & evening, under very adverse conditions I sent him as a coy runner and during that night he did his full share of guard and patrols. His attitude was always one of willingness and did not begrudge any work. It is chiefly from the above that I base my statement - and considered him as one of the most valuable men in the pl. We then returned to San Vicola, where we spent appx. a week, following which we returned to the Bde rest area. From which place the accused was sent on 48 hrs leave. The following day, I myself & 7 Pl & went to my present pos. in Support Coy & last I have seen of the accused until this date.

Prosecution: no closing address

Defence closing address

Charge (i) First of all you have heard the evidence of character by Lt Cuthill, which should give you a good insight into the man's character. Except for one slip this man has soldiered very well since the last stages of the Sicilian campaign. When he did go absent he left at a time when the Bn was not in the line and after he himself had been through some hard campaigns. I therefore submit that these circumstances should be taken into consideration of mitigation of sentence.

Charge (ii) I ask the charge to be withdrawn completely for the following reasons — i) the doubt about the actual words which were said ii) both Sgt Candy & the RSM seem in doubt as to the lapse of time bet. their orders. iii) checking the notes on charge under sect VIII the accused had his back turned at the time — therefore establishing reasonable order. He only turned his head to answer

CC

Proceedings on Plea of Guilty.

* To be struck out in case no plea of "Not Guilty" has been proceeded with.

*[The Court having been re-opened, the accused is again brought before it, and the charge to which he has pleaded "Guilty" read to him again.]

The accused A94037 Pte. Lee Edward Story 48th. Highrs of C is found guilty of Absence without leave & Not Guilty of the Second charge. The finding of Not Guilty on the second charge is announced in Open Court. A.A. 156)

†The summary (~~or abstract~~) of evidence is read, marked "M" signed by the President, and attached to the proceedings.

Question to the accused. Do you wish to make any statement in mitigation of punishment?

Answer. The accused in mitigation of punishment says:—No Statement

[*or* hands in a written statement, which is read, marked , signed by the President, and attached to the proceedings.]

Instruction.

† If there is no summary or abstract of evidence, sufficient evidence to enable the Court to determine the sentence, and to enable the confirming officer to know all the circumstances connected with the case, will be taken on a separate sheet in the same manner as on a plea of "Not Guilty."

If from the statement of the accused, or from the summary or abstract of evidence, or otherwise, it appears to the Court that the accused did not understand the effect of his plea of "Guilty," the Court shall alter the record, and enter a plea of "Not Guilty," and proceed with the trial accordingly.

Do you wish to give evidence yourself or to call any witnesses as to character?

Question to the accused.

No

Answer.

Evidence as to character.

1st Witness for the Defence: Lt. J. C. Cunelly having been duly sworn states — "At the present moment I am Actg Pl. Comds - 3 Pl. Support Coy - and prior to that for a period of about 2 weeks beginning 27th Dec 43 I was a Pl. Comds - 7 Pl. A Coy. The accused was a Pte soldier in my platoon. During the time I knew him I thought extremely highly of him as a soldier, I base that on the fact we were having a very bad time - 2 or 3 days of very heavy shelling and following that we attacked San Tommaso. After we had reached our Objective in San Tommaso there were appx. 13 men left in the Pl. and we had 2 loop-hole the walls of a house. The men were so tired I could only keep about 6 of them awake in spite of the imminent danger we were in. The accused during this time, worked extremely hard; in fact did majority of the loop-holing himself. Later on in afternoon & evening, under very adverse conditions I sent him as a Coy. runner and during that night he did his full share of guard and patrols. His attitude was always one of willingness and did not begrudge any work. It is chiefly from the above that I base my statement - and considered him as one of the most valuable men in the Pl. We then returned to San Nicola, where we spent appx. a week, following which we returned to the Bde rest area. From which place the accused was sent on 48 hrs leave. The following day, I myself left 7 Pl & went to my present pos. in Support Coy. So last I have seen of the accused until this date.

Prosecution: no closing address

Defence closing address

Charge (i) First of all you have heard the evidence of character by Lt Cunliffe which should give you a good insight into the man's character. Except for one slip this man has soldiered very well since the last stages of the Sicilian campaign. When he did go absent he left at a time when the Bn was not in the line and after he himself had been through some hard campaigns. I therefore submit that these circumstances should be taken into consideration of mitigation of sentence.

Charge (ii) I ask the charge to be withdrawn completely for the following reasons — i) the doubt about the actual words which were said ii) both Sgt Candy & the RSM seem in doubt as to the lapse of time bet. their orders. iii) checking the NCO's charge under sect VIII the accused had his back turned at the time — therefore establishing reasonable order. He only turned his head to answer

E

Finding.*

*To be struck out except in cases where trial has taken place on a plea of "Not Guilty."

The Court is closed for the consideration of the finding.

The Court find that the accused B74037 Pte. Fee Edward Tony

A.A Sec. 15(1) Guilty
A.A. Sec. 8(2) Not Guilty. — Announced to accused in Open Court.

Proceedings on Conviction before Sentence.

*When the Court is already open this sentence will be struck out.

*The Court being re-opened, the accused is again brought before it.

Evidence of character, &c.

H. J. MacDonald is duly sworn.

Question by the President.

Have you any evidence to produce as to the character and particulars of service of the accused? *Answer by the Witness.* Yes

The above statement [with the schedule of convictions and of cases in which trial has been dispensed with] is read, marked C.O signed by the President, and annexed to the proceedings.

Question by the President.

Is the accused the person named in the statement which you have heard read? *Answer by the Witness.* Yes

Question.

Have you compared the contents of the above statement with the regimental books? *Answer.* Yes

Question.

Are they true extracts from the regimental books, and is the statement of entries in the conduct sheets a fair and true summary of those entries? *Answer.* Yes.

Cross-examined by the accused. None

[Instruction.—If by reason of the nature of the service of the accused in a departmental corps or otherwise, the finding of the Court renders him liable to any additional punishment to be awarded by the Court, he personally must hear the attention of the Court to the fact, and the Court must inquire into the nature and amount of the additional punishment.]

Question to the accused.

Do you wish to address the Court? *Answer.* No

The Court is closed for the consideration of the sentence.

F

Sentence.

The Court sentence the accused

see Schedule

Sentence

(13T)

On completion return to D.A.P.M., R.A.F. VASTO. L.G. Barrand F/Lt.

Army Form B. 252
(See King's Regulations)

CHARGE

48th. Canadian Highlanders. Regiment.

Battery, Squadron, Troop or Company.

CHARGE against:- Number B 74037 Rank Private

Name FEE E.S.

Place St. Thomasa Date of Offence 14.1.44

OFFENCE :- W.O.A.S.

Absent from hours on 14.1.44 until reporting to Cpl. Redmond E., Royal Air Force Police, at R.A.F. Police Headquarters, Vasto at 2045 hours on 2.2.44. (Absent 20 days 8 Hours. 45 mins.)

Names of witnesses Cpl. Redmond E. R.A.F. Police.

Signature of O.C. Battery, Squadron, Troop or Company

Punishment awarded

By Whom awarded Adjutant.

EXHIBIT "A"

CERTIFICATE OF SURRENDER UNDER A.A. SEC. 163 (i) (j)

I, Flight Lieutenant Barrend L.G. certify that No B 74037

Rank Private Name FEE E.S.

Unit 48th. Canadian Highlanders Surrendered himself to

No. 1132894 Rk A/Cpl. Name Redmond E.,

Unit ~~509 Ind. Mob. Pro. Coy~~ R.A.F. POLICE VASTO. at R.A.F. POLICE HQ's on the 2nd day

of February 1944 at 2045 hrs as ~~a deserter~~/absentee without leave. He was dressed in Uniform/~~Civilian clothes~~.

DEPUTY ASSISTANT PROVOST MARSHAL
2 Apr 1944
ROYAL AIR FORCE

L.G. Barrand F/Lt., ~~Capt.~~, ~~R.C.M.~~.
~~G.C. 509 Ind. Mob. Pro. Company.~~
Deputy Assistant Provost Marshal,
Royal Air Force, VASTO.

48th Highlanders of Canada

8 Feb 44.

I herby certify that I desire,
Lt. E.H. SHUTER,
The Royal Canadian Regiment
to defend me at my pending trial
by Court Martial.

B.74037 Pte. [illegible] E.S.

LIST OF WITNESSES IN THE CASE OF B.74037 PTE. FEE, E.S.
"A" COY 48TH HIGHLANDERS OF CANADA

PROSECUTION

Lt. W.A. HUNTER "A" COY 48th Highlanders of Canada

B.73532 Sjt. RANNEY, J.J Bn. H.Q. 48th Highlanders of Canada

B.74089 Sjt. CANDY, S.J. Bn. H.Q. 48th Highlanders of Canada

B.72533 RSM CROSSLEY, W. Bn. H.Q. 48th Highlanders of Canada

DEFENCE

Nil at present.

LIST OF EXHIBITS IN THE CASE OF B.74037 Pte. FEE, E.S.

"A" COY 48TH HIGHLANDERS OF CANADA

EXHIBIT "A" CERTIFICATE OF SURRENDER OF THE ACCUSED TO R.A.F. POLICE AT VASTO.

Summary of Evidence in the case of B.74037 Pte. FEE, Edward Story, "A" Coy., 48th Highlanders of Canada.

By direction of the Commanding Officer, Lt-col. I.S. JOHNSTON, D.S.O., 48th Highlanders of Canada, all evidence is taken on oath.

1st Witness for the Prosecution — Lt. W.A. HUNTER, 48th Highlanders of Canada, having been duly sworn states: "I am O.C. No. 7 Pl, "A" Coy, of which the accused is a member. On the morning of 13 Jan 44 the platoon was ordered to pack and prepare to move to a new position some distance away. The accused in particular was warned to be ready to move by 1200 hrs. When the Coy parade was called at that time the accused was absent. A thorough search of the platoon billets was made. The accused continued to be absent until he was returned to the unit under escort on 3 Feb 44 and if he had returned at any time during that period to the platoon I would have known about it."

W.A. Hunter.....
Lt. W. A. Hunter

The accused declines to cross examine the witness.

2nd Witness for the Prosecution — B.73532 Sgt. RANNEY, J.J., having been duly sworn states: "I am Bn Orderly Room Sergeant of the 48th Highlanders of Canada. I wish to present as Exhibit "A" a certificate of surrender of the 48th Highlanders of Canada to the R.A.F. Police, VASTO, purporting to be signed by F/Lt. BARRAND, L.G., D.A.P.M., R.A.F. (VASTO). I identify Pte. FEE as the man charged."

J.J. Ranney.....
B.73532 Sgt. Ranney, J.J.

The accused declines to cross examine the witness.

3rd Witness for the Prosecution — B.74089 Sgt. CANDY, S.J., having been duly sworn states: "At approximately 1130 hrs 6 Feb 44 I gave Pte. FEE an order to take his hands out of his pockets. He did not obey my order. Then the R.S.M. gave him a similar order."

S.J. Candy Sgt.....
B.74089 Sgt. Candy, S.J.

4th Witness for the Prosecution — B.72533 R.S.M. CROSSLEY, W. having been duly sworn states: "At approximately 1130 hrs 6 Feb 44 the accused was returning under escort from the C.O's Orderly Room. Sgt Candy, the Provost Sergeant, told him to take his hands out of his pockets. The accused failed to comply with the order. I told him to take

4th Witness for the Prosecution (cont.)

his hands out of his pockets and the accused turned round and shouted back in an insubordinate manner, "I heard you, I'm taking them out"."

R.S.M. Crossley, W.
B.72533 R.S.M. Crossley, W.

The accused declines to cross examine the witness.

The accused declines to call any witnesses in his defence.

The accused, having been cautioned in accordance with R.P. 4(E), states: "I have nothing to say at this point."

Certified that Rules of Procedure 4(c), (d), (e) and (f) have been complied with.

Taken down before me in the presence and hearing of the Accused "In the Field" this 6th day of February 1944.

I. MacDonald
Lt. I MacDonald.

D 43

M.F.B. 355
22M—5-41 (572-3)
H.Q. 1772-39-620
A.F.B. 206

STATEMENT AS TO CHARACTER AND PARTICULARS OF SERVICE OF ACCUSED

Number	Rank	Name	Regiment (or unit)
B.74037	Pte.	FEE, E.S.	48th Highlanders of Canada.

1. The following is a fair and true summary of the entries in the MFM.6 Regimental and Squadron, Battery Conduct sheets of the accused, exclusive of convictions by a Court-Martial or a Civil Court, of summary awards under Section 47 of the Army Act and of cases in which trial has been dispensed with.

	Within last 12 months		Since enlistment or appointment	
For A.A. Sec 15 (1)	Six	times	Thirteen	times
For A.A. Sec 40	One	times	Two	times
For A.A. 11a	One	times	One	times
For A.A. Sec 8 (2)	---	times	One	times

Number of instances of gallantry or distinguished conduct

or,

There are no entries in the conduct sheets of the accused.

NOTE.—If the charge is for drunkenness, the entries for drunkenness must be stated separately.

2. The accused has not been previously convicted

or,

Previous convictions of the accused by a court-martial or a civil court, of summary awards under Section 47 of the Army Act and dispensations with trial under A.A. 73 are set out in the Schedule annexed to this statement.

3. The accused is not under sentence at the present time.

or,

The accused at the present time is under sentence for N/A beginning on the day of N/A

4. The accused has been in confinement awaiting trial on the present charges, for days in civil custody, and 12 days in military custody, making a total of 12 days in custody, of which Nil days were spent in hospital.

5. The present age of the accused according to his record of service is 30 yrs. 3 months, 26 d

6. The date of his attestation specified in his record of service is 11 Mar 40

7. The service which the accused is allowed to reckon towards discharge is N/A

8. The accused is entitled to reckon 3 yrs 10 mons. 27 days service for the purpose of determining his pension, etc.

9. The accused is in possession of or entitled to no air force decoration, or air force reward (or is in possession of or entitled to). State any air force decoration or reward.

N/A

10. (If the accused is a warrant officer.) The accused before he was made a warrant officer last held the regimental rank of N/A

11. (In the case of an officer.) The accused holds in the Royal Canadian Air Force the rank of ~~Permanent Force~~ unit

N/A dated ....., and in his regiment (or corps), the rank of

N/A dated .....

12. The accused has served as a non-commissioned officer continuously, without reduction, to the present date:—

..... Date of promotion.

In the rank of N/A ..... years.

In the rank of ~~N/A~~ ..... years.

In the rank of ~~N/A~~ ..... years.

NOTE.—If any matter in any of the above paragraphs cannot be stated from the Regimental books, the paragraph must be struck through.

SCHEDULE

Of convictions by a court-martial or civil court, of summary awards under Section 47 of the ~~Army~~ Air Force Act, and of cases in which trial has been dispensed with of accused, Number ..... Rank ..... Name ..... of ~~Regiment~~ Unit

NOTE.—A verbatim extract from the regimental books stating these convictions and dispensations with trial must be inserted.

Description of Court by which tried	Date and Place of Trial	Charge upon which convicted	Sentence of the Court	Punishment Remitted
This soldier has NOT been previously tried by civil court or Court Martial				

I hereby certify that the foregoing schedule of convictions and dispensations with trial is a true extract from the regimental books in my custody.

Signed this 15 Feb 44 day of .....

The above statement (with the schedule of convictions and of cases in which trial has been dispensed with) is read, marked ..... signed by the president, and annexed to the proceedings.

(BLAIR. S. ABY) Capt.,
Adjutant,
48th Highlanders of Canada.

No. 374037 Name [illegible] E.S. | Sqn., Battery, or Company | Corps | Date of enlistment 11/3/40 | G.C. Badges | Service or Proficiency Pay | M.F.M. 6 (A.F.B. 122) 175M—7-41 (1219-20) H.Q. 1772-39-1652

Date of last entry in Company Conduct Sheet 16/5/40 | No. and date of last drunk 1st 16/5/40 | Period not reckoning towards freedom from extra fine | Sheet No. 1 | Signature O.C. Company, etc. | Character

Place	Date of offence	Rank	Cases of drunkenness	OFFENCE	Names of Witnesses	Punishment awarded	Date of award or of order dispensing with trial	By whom awarded	Remarks
Field	25/1/41	Pte		A.W.L. from 2359 hrs 19/1/41 to 2340 hrs 25/1/41 A.A.Sec.15(1)	Sgt Woodard	14 dys detn	28/1/41	Major Fletcher	Forfeits 6 dys pay FRI Forf. 14 dys per 14 dys FRI. a.s. 20 dys pay.
Field	2/5/41	Pte		A.A.Sec 15(1) A.W.L. from 2200 hrs 8/3/41 to 0630 hrs 9/3/41.	Cpl Wilson	21 dys detn	10/3/41	Lt.Col. Slack	Forfeits 1 dys under FRI 149(1)(a) Forf. 21 dys under F.R.& I 149(1)(a)

Place	Date of offence	Rank	Cases of drunkenness	OFFENCE	Names of Witnesses	Punishment awarded	Date of award or of order dispensing with trial	By whom awarded	Remarks
Field	6/8/41	Pte		A.A.Sec. 8(3) using insubordinate language to a superior officer	Lt.MacIntosh Sgt.Drew Documentary	Forf. 7 days pay Sec.46 AA	7/8/41	Lt. Col Sutherland	
Field	6/8/41	Pte		A.A.Sec40 conduct to the prejudice etc. when ordered to work did not do so	Lt.Redick Lt.Couche	14 days C.B.	7/8/41	Lt.Col Sutherland	
Field	16/8/41	Pte		A.A.Sec 12(1) A.W.L. from 2359hrs 16/8/41 to 2000 hrs 19/8/41 absent 2 dys 20 hrs.	L/Cpl Curran	5 dys forf. of pay under Sec 46 A.A.	20/8/41	Lt.Col Sutherland	Forfeits 3 dys pay under F.R.& I.
Field	14/2/42	Pte		A.W.L. from 2359 hrs 14/2/42 to 0945 hrs 15/2/42 A.A.Sec 15(1)	Sgt Latham		16/1/42	Lt.Col Bingham	Forfeits 3 dys pay A.A.46 Forf.1 dys payFRI Total Forf. 4 dys pay

No. S74037 Name FEE E.S. | Sqn., Battery, or Company | Corps | Date of enlistment 11/3/40 | G.C. Badges | Service or Proficiency Pay

Date of last entry in Company Conduct Sheet | No. and date of last drunk 1st 16/5/40 | Period not reckoning towards freedom from extra fine | Sheet No. 2 | Signature O.C. Company, etc. | Character

M.F.M. 6 (A.F.B. 122) 175M—7-41 (1219-20) H.Q. 1772-39-1452

Place	Date of offence	Rank	Cases of drunkenness	OFFENCE	Names of Witnesses	Punishment awarded	Date of award or of order dispensing with trial	By whom awarded	Remarks
Field	14/7/42	Pte		A.W.L. from 2359 hrs 14/7/42 to 0205 hrs 16/7/42	S/t Palmer Pte Thompson	2 days pay	16/7/42	Lt.Col Watson	2 days pay under Vol 149(1)(a)
Field	9/8/42	Pte		A.W.L. from 2200 hrs 9/8/42 to 0945 hrs 10/8/42 Total Absence Documentary 1 day 45 Min. A.A.Sec 15(1)	L/Cpl Davidson	7 Forf. of pay	12/8/42	Lt.Col W.J.Bingham	Forf 2 dys 2 dys pay total
Field	15/8/42	Pte		A.C.A.S. A.W.L. from 2200 hrs 15/8/42 to 0900 hrs 16/8/42 (11 hrs) A.A.Sec.15(1)	L/Cpl Wells	1 day as punishment	14/8/42	Lt.Col W.J.Bingham	Total 2 days Forf. Auto.Forf. 1 day pay

(P.T.O.)

Place	Date of offence	Rank	Cases of drunkenness	OFFENCE	Names of Witnesses	Punishment awarded	Date of award or of order dispensing with trial	By whom awarded	Remarks
Field	28 Mar 43	Pte		A.A.Sec 15(1) A.W.L. from C.Comd. parade 28 Mar. 43	CSM McDonell	7 days C.B.	30 Mar 43	Major R.Burgess	
Field	9 Apr 43	Pte		A.A.15(1) A.W.L. 1 day 1 hour 20 Mins. 2315 Hrs 3/4/43 2330 hrs 9 Apr 43	L/Sgt Kent	7 days C.B.	13 Apr43	Lt Col W.O.Pefferepay	Forf 2 days pay FRI
Field	14 May 43	Pte		A.A.15(1) A.W.L. from 0600 hrs 14 May 43 until 1115 hrs 14 May 43 T.T.A. 5 hrs 15 Mins.	Cpl Loveday	3 days pay	15 May 43	Col. L.M. Watson	3 dys pay FRI 149(i)(a)
Field	4/6/43	Pte		A.A.15(1) A.W.L. from 0600 hrs 4 Jun 43 until 0645 hrs 4 Jun 43 Absent 45 Min)	Cpl Skeratt	5 days C.B.	4 Jun 43	Lt.Col W.F Bristowe	

No. B74037 Name FEE E.S. | Sqn., Battery, or Company | Corps | Date of enlistment 11/3/40 | G.C. Badges | Service or Proficiency Pay | M.F.M. 6 (A.F. B.122) 40/P & /8136 (2)

Date of last entry in Company Conduct Sheet | No. and date of last drunk 1st 16/5/40 | Period not reckoning towards freedom from extra fine | Sheet No. 3 | Signature O.C. Company, etc. | Character

Place	Date of offence	Rank	Cause of drunkenness	OFFENCE	Names of Witnesses	Punishment awarded	Date of award or of order dispensing with trial	By whom awarded	Remarks
Field	13 Jun 43	Pte		A.A.Sec 15(1) A.W.L. from 2359hrs 13 Jun 43 to 2100 hrs 15 Jun 43 (Total Absence 1 day 21 hrs 1 Min)	Documentary	Forf 21 days pay FRI 149(2)	18 Jun 43	W.P.Bristowe Lt	Forf 9 days FR&I 149(1)(a)
Field	23/9/43	Pte		W.O.A.S.(1)Conduct to the prej. etc. in that he left his Pl.area without permission Sec.40 A.A. (2)A.W.L. from 1600 hrs 23 Sep. 43 until 0530 hrs 24 Sep 43 (Absent 15 hrs. 30 Mins)Sec.15(1) A.A. (3) Failing to comply with standing orders i.c. being in the MATURA without a pass Sec.11 A.A.	Sgt Walsh L/Cpl Bernier Lt.Magee		10/10/43	Lt.Col I.S.Johnston	Forfs. 1 Days pay FR & I 149 (1)(a), Forfs 28 days pay FR & I 149(2)

(P.T.O.)

Place	Date of offence	Rank	Cases of drunkenness	OFFENCE	Names of Witnesses	Punishment awarded	Date of award or of order dispensing with trial	By whom awarded	Remarks
				I, as Officer in charge of Regimental Records, hereby certify this to be a true and exact copy.					
				(R.S.WEY) Capt., Adjt., 48th Highlanders of Canada.					

10M-6-46 (9228)

H.Q.C. 55-F-861 CONFIDENTIAL

H.Q.S.301-1-27

DEPARTMENT OF NATIONAL DEFENCE - OTTAWA, CANADA

SUBJECT

FIELD GENERAL COURT-MARTIAL

FEDOR, ANTHONY B-102617 TR

CONFIDENTIAL
H.Q.C. 55-F-861

CENTRAL REGISTRY	DATE	P.A. OR D.F.	INITIALS	REFERRED TO	FOR	INITIALS	DATE
				(If purpose for which returned cannot be expressed on one line enter here "With Minute")			2-12-46

OVERSEAS COMBINED

NOTICE

1. Files should be retained no longer than absolutely necessary. If a file is frequently needed at short intervals, it is better, W.D.F. 55 for two or three days than keep it out of Central Registry indefinitely. This ensures it being completed and kept in order, and other officers will be prevented from unnecessarily re-opening.

2. If a subsidiary action should be required, opening a file is quicker and safer than writing a letter.

PAGE THIS FILE IN ENVELOPE

Correspondence to be PINNED here.

46 T.

Army Form A.3.

Form for Assembly and Proceedings of Field General Court Martial on Active Service.

PROCEEDINGS.

A.

On Active Service, this twenty-first day of November, 1942. Order convening the Court.

Whereas it appears to me, the undersigned, an officer in Command of "E" Group, Canadian Reinforcement Units, on active service, that the persons named in the annexed Schedule, being subject to Military Law, have committed the offences in the said Schedule mentioned.

And whereas I am of opinion that it is not practicable that such offences should be tried by an ordinary General Court Martial; *[~~and that it is not practicable to delay the trial for reference to a superior qualified officer.~~]

*Omit where Convening Officer is a Commanding Officer or is of Field Rank.

I hereby convene a Field General Court Martial to try the said persons, and to consist of the Officers appointed or detailed hereunder.

*Omit if not applicable.

*[~~I am unable to appoint:—~~

*(1. ~~Three Officers to form the Court.~~)

*(2. ~~A Field Officer as President.~~)

~~for the following reasons, namely:—~~]

Proceedings Reviewed [illegible] Reviewing Officer (A.G.) C.M.H.Q.

Note.—The President must be named. The members and waiting members (if any) may be mentioned by name, or the number and ranks and the unit to which they belong may alone be named. In the latter event, the ranks, names, &c., of the members of the court, as constituted, will be recorded on the proceedings.

President.

Rank.	Name.	Regiment.
Lieut-Col	D.L. Redman, V.C.	Calg Highrs

Members.

Rank.	Name.	Regiment.
Major	J.F. Reason	G.G.H.G.
Captain	F.F. Adams	C. Fus. C.
Captain	M.R. Crooke (waiting member)	6th Hussars

* Must be signed personally by the Officer actually in command at the time, and all alterations in the composition of the Court to be initialled by him.

*Signed [illegible] (A. Lee) Colonel

Commanding [illegible] Group, C.R.U.

Convening Officer.

SCHEDULE.

Number, Rank (a), Name and Unit of Accused (b)	Offence charged	*Plea	Finding, and if Convicted, Sentence (c)	How dealt with by Confirming Officer (d)
B.102617 Tpr FEDOR, T.A.	First Charge: Sec 15(1) A.A. (as per attached Charge Sheet)	Guilty	Guilty Sentence To undergo detention for a period of seventy five (75) days and to be put under stoppages of pay until he has made good the sum of £1-18-9 the expenses of his apprehension 25 Nov 1942	Finding and Sentence Confirmed 23/11/42

* Question to be asked of accused, if he pleads not guilty (R. of P. 39 (a)):—
"Do you wish to apply for an adjournment on the ground that any of the rules relating to procedure before trial have not been complied with, and that you have been prejudiced thereby, or on the ground that you have had insufficient opportunity for preparing your defence?"
Answer (to be recorded on separate sheet if necessary):—

(Signed) _____ (Signed) _____
Commanding "E" Group, C.R.U. President.
Convening Officer (c)

(a) Appointment acting rank or acting appointment, if any, to be stated in brackets after the substantive rank.
(b) Unless unavoidable, not more than three names are to be entered on one form, and in serious cases one only.
(c) Recommendation to mercy, if any, to be inserted in this column.
(d) It is not necessary that the Confirming Officer should sign his name in this column. Initials are sufficient.
(e) Must be signed by the same Officer who signs on the first page, and all alterations in the first two columns of the Schedule to be initialled by him.

Evidence and Charge Sheets (if necessary) to be PINNED here.

B. Certificate of President as to proceedings.

I certify that the above Court assembled on the 23rd day of November 1942, and duly tried the persons named in the Schedule, and that the plea, finding, and sentence in the case of each such person were as stated in the third and fourth columns of that Schedule.

I also certify that :—
1. The members of the Court
2. The witnesses
*(3. ~~The interpreter~~)
*(4. The officers under instruction)

were duly sworn.

* Omit if not applicable.

Signed this 23rd day of November 1942

_____
President of the Court Martial.

C. Certificate in case of death sentences.

* See footnote (b) on page 702 M.M.L. 1929.

~~I certify that the terms of *A.C.I. 570 of 1918 have been complied with.~~

Signed this _____ day of _____ 19 .

_____
President of the Court Martial.

D. Confirmation.

I have dealt with the findings and sentences in the manner stated in the last column of the Schedule, and, subject to what I have there stated, I hereby confirm the above findings and sentences.

*~~(I direct that the soldier named in the margin be not committed to prison or detention barrack until further orders.)~~

* To be omitted unless penal servitude, imprisonment or detention having been awarded, the Confirming Officer either has no authority to commit to prison or detention barrack, or, having such authority, recommends suspension.

Signed this 23 day of Nov 1942

_____
Confirming Officer.

Promulgated and extracts taken in the case of B102617 Tpr Fedor T.A.

(a) (Dated) 25 Nov 42 (Signed) _____ Captain 3 CAERU

Promulgated and extracts taken in the case of

(Dated) _____ (Signed) _____

Promulgated and extracts taken in the case of

(Dated) _____ (Signed) _____

(a) When several cases are promulgated in one unit on the same day the Officer need only sign once.

W1, 47787/1937 35 M. 5/41 K.H.S./3561(2) Gp. 698/3

CHARGE SHEET

The accused B102617 Trooper Anthony FEDOR
No. 3 Canadian Armoured Corps Reinforcement Unit
C.A.C., a soldier of the Canadian Army Overseas,
is charged with:--

WHEN ON ACTIVE SERVICE, ABSENT WITHOUT LEAVE

in that he

First Charge
Sec. 15(1)
Army Act.

at Dettingen Barracks, Blackdown, on 6th October, 1942 absented himself from No. 3 Canadian Armoured Corps Reinforcement Unit, C.A.C. from 1200 hrs. on said 6th day of October, until he surrendered himself to the civil power at Liverpool at 1725 hours on the 10th day of November, 1942 (Total time absent 35 days, 5 hrs. 25 min.) cost of apprehension and return to his corps -- 21-15-9.

"W.W. HALPENNY" Lieut.-Col.
Officer Commanding
No. 1 Training Wing
No. 3 C.A.C.R.U.

16 November, 1942
Blackdown, Hants.

(G. W. LITTLE) Col.,
Commanding 3 C.A.C.R.U.

To be tried by a Field General Court-Martial.

21 November, 1942
Blackdown, Hants.

(G.A. Lee) Colonel,
Comd. "B" Gp. C.A.C.R.U.

CHARGE SHEET

The accused B102617 Trooper Anthony FEDOR No. 3 Canadian Armoured Corps Reinforcement Unit C.A.O., a soldier of the Canadian Army Overseas, is charged with:--

WHEN ON ACTIVE SERVICE, ABSENT WITHOUT LEAVE

in that he

First Charge
Sec. 15(1)
Army Act.

at Dettingen Barracks, Blackdown, on 6th October, 1942 absented himself from No. 3 Canadian Armoured Corps Reinforcement Unit, C.A.O. from 1200 hrs. on said 6th day of October, until he surrendered himself to the civil power at Liverpool at 1725 hours on the 10th day of November, 1942 (Total time absent 35 days, 5 hrs. 25 min.) cost of apprehension and return to his corps -- £1-15-9.

"W.W. HALPENNY" Lieut.-Col.
Officer Commanding
No. 1 Training Wing
No. 3 C.A.C.R.U.

16 November, 1942
Blackdown, Hants.

(G. W. LITTLE) Col.,
Commanding 3 C.A.C.R.U.

To be tried by a Field General Court-Martial.

(S.A. Lee) Colonel,
Comd. "E" Gp. C.R.U.

21 November, 1942
Blackdown, Hants.

MEDICAL OFFICER'S REPORT

I certify that No. B 102617 Spr Hedon H
of #3 C H C A U was examined by undersigned and
is in a good state of health,
and fit to undergo Trial by Court Martial.

Jno Haggarty
Medical Officer

Station Lethbridge Barracks
Date Thu 23 1943

M M Mutt Col
P/Rs

B10267 Tpr Bedor. T.A.

Officers under Instruction			1 C.A.C.R.U.	
Lieut	T. W.	Robertson	3 C.A.C.R.U.	8th N.B.H.
"	G. L.	Cameriand	3.C.A.C.R.U.	Sher. Fus.
A/Adjt	V. G.	Stroud	2 C.A.C.R.U.	P.E.
Lieut	J. N	Vanouer.	2 C.A.C.R.U	P.E.
"	J. W.	Black	2 C.A.C.R.U.	C.A.C.
Capt.	R.E.C.	Lord	2 C.A.C.R.U.	P.E. Coly TR
Lieut	W.D.	West	3.C.A.C.R.U.	C.A.C.
"	N.B.G.	Rossell	3 C.A.C.R.U.	C.A.C.

PROCEEDINGS OF A FIELD GENERAL COURT-MARTIAL
HELD AT Bettington Barks. Blackdown,
ON THE 23rd DAY OF November 1942

The accused B.102617 Tpr. Fedorka .....Unit No. 3. C.A.C.R.U...

The order convening the Court and charge sheet are laid before the Court who satisfied themselves as provided by Rs.P. 22 & 23.

The accused is brought before the Court
The Medical Certificate is laid before the Court, signed by the President and attached to the proceedings.
The order convening the Court is read by the President and the accused having no objection to the President or any member of the Court, the Court is duly sworn.

The following constitute the Court:

President Lt.-Col. D.L. REDMAN. V.D. Unit Calg. Highrs.

Members Major. T.F. REASON.....Unit 66 H.A.A. 3 C.A.D. 3.A.Regt.

Capt. E.T. Adams.....Unit [redacted] No. 2 C.

The officers under instruction are duly sworn.

Prosecutor Lieut. M.G. Woods.....Unit 9th Canad. Royl. E.C.A.D.

Defending Officer Lieut. E.K. Kenny..Unit 3.C.A.C.R.U..

The charge sheet is signed by the President and the accused is arraigned.
The accused pleads guilty to the charge(s) and R.P. 35(B) is complied with.
The accused does not desire to make a statement in reference to the charge(s).
The Summary of Evidence is read, signed by the President and attached to the Proceedings.
The Prosecutor is sworn and produces AFB 296 and MFM 6.
The Court complies with R.P. 46(3)

Pursuant to R.P.37 THE ACCUSED

Nil (a) ~~makes a statement in mitigation of punishment~~
(b) calls witnesses as to character or
Nil (c) ~~calls witnesses in mitigation of punishment~~
(d) addresses the Court by his Defending Officer
Nil (e) ~~cross-examines~~

The Court is closed to consider the sentence.

SUMMARY OF STATEMENT IN MITIGATION, CHARACTER EVIDENCE AND ADDRESS OF ACCUSED OR HIS DEFENDING OFFICER

All evidence of 3 character witnesses and statement of D.O. attached.

[redacted] Pres

(To be signed by the President and attached to A.F.A.3)

(over)

1st Witness as to the character of the accused.

A 520, L/Cpl. C. J. Wells, 6 Aust. Regt. 1 C.A.C.R.U, having been duly sworn, is EXAMINED BY THE DEFENDING OFFICER:

Q1. How long have you known the accused?
A1. Since May of this year, sir.
Q2. Have you been in close contact with him during that time?
A2. I have, sir.
Q3. Have you lived in the same hut together?
A3. Practically all the time sir.
Q4. Have you had any trouble with him?
A4. No. sir.
Q5. Any Orders you gave to him, did he obey them?
A5. Always, sir willingly.
Q6. How did he mix with the other soldiers?
A6. Very well sir.
Q7. Was he dependable?
A7. Yes sir.
Q8. How would you classify him as a soldier?
A8. As far as I found him, sir, very good.

2nd Witness as to the character of the Accused. —

B 61750 L/Cpl. Shingsby H.W. 3 A.C.R.U., having been duly sworn, is EXAMINED BY THE DEFENDING OFFICER:

Q9. L/Cpl Shingsby, how long have you known the accused?
A9. Quite a while, sir. I knew him in Borden before we came Overseas.
Q10. Did you stay close to him?
A10. Right across the hall from him, sir.

Q 11:- Did you ever have any trouble with him?
A 11:- Not a sir.
Q 12:- When you gave him orders, what was his reaction?
A 12:- He always obeyed.
Q 13 How did he get along with the other fellows?
A 13:- Very well sir.
Q 14:- How would you classify him as a soldier?
A 14:- He was always a good soldier, never caused any disruption or trouble sir.

3rd Witness as to the character of the accused:-
L53556 Sgt Boland R.A.S.C.A.C.R.U, having been duly sworn is EXAMINED BY THE DEFENDING OFFICER.
Q 15 Sgt Boland, how long have you known the accused?
A 15:- Since we left A 9 Camp Borden in April of this year.
Q 16:- Have you been in close contact with him since that time?
A 16:- I have been his troop sergeant since we came over.
Q 17: Did you ever have any trouble with him?
A 17: He has been a good soldier since I have known him.
Q 18 What was his reaction to obeying orders?
A 18: Very good sir.
Q 19:- Did he mix well with the other soldiers?
A 19:- Yes sir.
Q 20: How would you classify him as a soldier?
A 20 Very good sir, dependable, I never had any trouble with him.

Mr President, Gentlemen of the court:- accused B102617 Tpr Fedor T.A
In voicing a plea for
leniency for the accused there are a number of points
which I submit should be borne in mind by
the court when they pass sentence on the accused.

Firstly:- the accused and myself as defending officer
both realize that a crime in the military sense
has been committed and consequently justice
must be done: that is punishment awarded.
on this point we have no illusions whatsoever
Secondly:- the court has heard character statements
from three non-commissioned officers, namely
Sgt. Bowland, Cpl. Wells, Cpl. Slingsby, all of these
N.C.O's did not hesitate to state that the accused
was a good soldier in every respect. A quite
efficient and willing worker, ready to do his part
and always get along well with the other
people with whom he lived. Some of these
N.C.O's have known the accused for quite some
considerable time and consequently are in a position
to give a very true picture of the accused as he
Thirdly:- although the accused was absent for slightly really is.
more than 35 days he did voluntarily surrender
himself to the civil authorities, not due to any
financial inabilities, as the accused still had some
money of the money he took with him when he
started his leave Lethbridge on Sept. This would seem
to indicate the cause of the absence without
leave lies in another direction.
Fourthly:- The real reason for the accused being
absent without leave. Tpr Fedor
enlisted in the Canadian army in
Sept of 1940. Came and except for his
early basic training was stationed at
Camp Borden, Ontario employed at various
times as a Dispatch Rider, Motorcycle
mechanic and instructing on motorcycles.
He came overseas this past April.
on arrival nothing with the expectation
of eventually being sent to a field unit
but instead has been employed here at
No 3 C.A.C. R.H as batman, orderly room
runner, doing fatigues and, basic Drill
Training in spite of the fact that on

different occasion he did request that he be allowed to work in the garages ~~shops~~ workshops, or something of that nature. but was refused on each occasion. In other words the trouble with Pvt Feder was to use an Army term, thoroughly browned off.

To inflict a severe punishment is not going to cure this disease. The condition will still exist regardless whether it manifests itself or not. It is the cause of the past that must be treated then the disease itself will not have a chance to develop.

I respectfully submit the above to the court for their consideration and trust the court will consider these points when they pass sentence on the accused

Firstly the record of the accused is clean. This will be first regimental entry on his AFM 6

E. K. Kennedy
Lieut

Paragraph 4 of foreword of pamphlet Morale issued C.M.H.Q 1 May 1942 to be inserted at XX

The Court is closed for the consideration of the sentence

Members & Pres.

SUMMARY OF EVIDENCE

(Accused present at Summary)
(when evidence of witnesses)
(taken down in writing)

R.P. 4

No. 3 Canadian Armoured Corps
Reinforcement Unit
Dettingen Barracks
16 Nov 42

Summary of Evidence in the case of B102617 Trooper Fedor, A. No. 3 Canadian Armoured Corps Reinforcement Unit, C.A.O. charged with:

When on Active service, absenting himself without leave.

R.P. 4F

The Commanding Officer directs that all evidence be taken on oath.

FIRST WITNESS

B61847 Tpr. Nelson, C.W. No. 3 Canadian Armoured Corps Reinforcement Unit, C.A.O. having been duly sworn states:

"Sir I am a clerk in "B" Squadron, No. 1 Training Wing, No. 3 C.A.C.R.U., stationed at Dettingen Barracks. On the 6 Oct 42 at 1300 hrs. I checked the list of personnel due in from privilege leave with the Guard Room and found that Tpr. Fedor, A. had not reported in or turned in his pass. I, therefore, submitted his name and number as an absentee from 1200 hrs. 6 Oct 42. I have not seen the accused since, until the time he was returned to the unit under military escort."

The accused declines to cross-examine the witness.

C.W. Nelson
Tpr. Nelson, C.W.

SECOND WITNESS

A186 SSM. Gallagher, J., No. 3 Canadian Armoured Corps Reinforcement Unit, C.A.O. having been duly sworn states:

"Sir I am Squadron Sergeant Major of "B" Squadron, No. 3 Canadian Armoured Corps Reinforcement Unit, C.A.O., stationed at Dettingen Barracks at 1315 hrs. on 6 Oct 42 I paraded "B" Squadron and had the roll called and Tpr. Fedor's troop Sergeant reported him absent, I thereupon checked at the Guard Room and found that Tpr. Fedor had failed to turn in his pass. I placed him on an absentee report dating from 1200 hrs. of the same day. I have not seen the accused since, until he was returned to this unit under military escort."

The accused declines to cross-examine the witness.

J. Gallagher
S.S.M. Gallagher, J.

Pres

THIRD WITNESS — Lieut. J. Tweddle, No. 6 Cdn. Provost Coy., C.A.O.

Certificate purporting to be a signed statement of the evidence of Lieut. H.W. Cowling, No. 6 Cdn. Provost Coy., C.A.O. was read over to the accused, marked exhibit "A" signed by me and attached hereto.
"I certify that in my opinion owing to the exigencies of the service including the time and expense involved and the attendance of this witness at the taking of the Summary of Evidence cannot be readily procured."

G.W. Wright
Lieut. G.W. Wright

The statement of expenses incidental to the apprehension of the accused was read over to the accused, who appeared to understand the same, marked as exhibit "B", signed by me and attached hereto.

G.W. Wright
Lieut. G.W. Wright

FOURTH WITNESS — T. Heatley MP Officer of Police in charge of Main Bridewell station.

Certificate purporting to be a signed statement of the evidence of T. Heatley MP Officer of Police in charge of Main Bridewell station, was read over to the accused, marked exhibit "C" signed by me and attached hereto.
"I certify that in my opinion that owing to the expense and loss of time involved and the attendance of this witness at the taking of the Summary of Evidence cannot be readily procured."

G.W. Wright
Lieut. G.W. Wright

FIFTH WITNESS — L2612 A/Cpl. McColl, D.R., 3 Canadian Armoured Corps Reinforcement Unit, C.A.O. having been duly sworn states:

"Sir I am a Provost Corporal at No. 3 Canadian Armoured Corps Reinforcement Unit, Canadian Army Overseas, stationed at Dettingen Barracks. When on duty in the Guard Room on 14 Nov 42 at 1345 hrs. Tpr. Fedor, A. was brought to the Guard Room by No. 6 Canadian Provost. He was dressed in civilian clothes. I signed for Tpr. Fedor and attached documents and I immediately took the accused into custody.

The accused declines to cross-examine the witness.

D.R. McColl
A/Cpl. McColl, D.R.

1m

The accused - B102617 Tpr. Fedor, A. 3 Canadian Armoured Corps Reinforcement Unit C.A.O.

"Do you wish to make any statement or to give evidence on oath. You are not obliged to say anything or to give any evidence unless you wish to do so, but whatever you say or any evidence you give will be taken down in writing and may be used in evidence?"

By the accused: "I have nothing to say at this time".

The accused declined to call witnesses in his own behalf.

A. Fedor
B102617 Tpr. Fedor, A.

I certify that R.P. 4 has been complied with
Taken by me at Dettingen Barracks 16 Nov 42 in the presence and hearing of the accused this 16th day of November, 1942.

G.W. Wright
Lieut. G.W. Wright

MS
M.M. Hurtubise
Pres

CERTIFICATE UNDER THE ARMY ACT, SECTION 163 (I) (J)

I, Lieut. J. Tweddle, No. 6 Cdn. Provost Coy., certify that B102617 Tpr. Fedor, A., No. 3 C.A.C.R.U., surrendered himself to No. P.C.121 Bamford, A. of the Liverpool City Police, on the 11 day of Nov 1942, at 1725 hrs. as an absentee without leave.

at the time of his surrender he was wearing (~~Military Uniform~~) or (Civilian Clothes)'

Signature of Provost- Marshall, Assistant Provost-Marshall or other officer or the Commanding Officer of the portion of His Majesty's Forces or the officer, warrant-officer or non-comissioned officer in charge of the detachment of the Canadian Provost Corps, Canadian Army into whose custody the above named person was taken on surrender.

LONDON
13 Nov 42

J. Tweddle Lieut.
Officer i/c Detention Room
No. 6 Cdn. Provost Coy.

"This is Exhibit "A" referred to in the Summary of Evidence in the case of B102617 Tpr. Fedor, A. 3 Cdn. A md. Corps Reinforcement Unit, C.A.O., taken before me this 16th day of November, 1942."

G.W. Wright
Lieut. G.W. Wright

"I certify that in my opinion owing to the exigencies of the Service including the time and expense involved, the attendance of this witness at the taking of the Summary of Evidence cannot be readily procured".

G.W. Wright
Lieut. G.W. Wright

Expense Voucher Re--: Ref: K.R. & O. (Can) 539

Reg. No. B102617 Rank Tpr. Name FEDOR, A. Unit 3 C.A.C.R.U.

The following expenses were incurred in apprehending and returning the M/N Soldier to LONDON from LIVERPOOL.

Date	Particulars	Amount
13 Nov 42	Escorts fare from LONDON to Liverpool (½ portion)	£0-15-2
	Prisoners single fare to LONDON form LIVERPOOL	£0-15-2
	Prisoners fare from To	
	Escorts & Prisoners expenses for Meals, Bus fares (½ portion)	£0-5-5
	Total	£1-15-9

I certify that the above statement of Expanses is Correct, and that the amounts are fair and just.

H.T. Guiness .....Lieut.

Officer Issuing Railway Warrant and Expense monies
No. 6 Provost Company, Canadian Provost Corps, London.

"This is exhibit "B" referred to in the Summary of Evidence in the case of B102617 Tpr. Fedor, A., 3 Cdn. Armd. Corps. Reinf. Unit, C.A.C., taken before me this 16th day of November, 1942."

G.W. Wright
Lieut. G.W. Wright

I certify that the man whose personal description is given below surrendered himself to Constable 121 A. Bamford at Main Bridewell at 1725 hours on the 10th day of November as being No. B102617 Trooper Anthony FEDOR a deserter (or absentee without leave) from Canadian Army Corps and it appears to me from his confession that he is a deserter or absentee without leave.

Age. 21 Height 5 feet 8 inches

Complexion Pale Hair Dark Brown Eyes Brown

Marks

In uniform or plain clothes Plain clothes

Probable Date and Place of attestation	Sept. 1940 Ontario Canada
Probable Date of Desertion or beginning of absence, and from what place	28 - 9 - 42 Blackdown

---

T Heatley MP

Signature of Officer of Police in charge of Main Bridewell Station

11-11-42 Date of Signature

"This is Exhibit "C" referred to in the Summary of Evidence in the case of B102617 Tpr. Fedor, A. 3 Cdn. Armd. Corps Reinforcement Unit, C.A.C., taken before me this 16th day of November, 1942."

G.W. Wright
Lieut. G.W. Wright

"I certify that in my opinion owing to the expense and loss of time involved, the attendance of this witness at the taking of the Summary of Evidence cannot be readily procured."

G.W. Wright
Lieut. G.W. Wright

CERTIFICATE UNDER THE ARMY ACT, SECTION 163 (I) (J)

I, ... No 6 Cdn Provost Coy certify that

No. B-102617 Rank Tpr. Name HEDOR, A.

REGIMENT ..... No3. C.A.C.H.U.

UNIT .....

STATIONED AT .....

Surrendered himself to No. R.C. 121 Rank BAMFORD A.

of the LIVERPOOL CITY POLICE.

on the 11 day of NOV. 1942, at 1725 hours

AS AN ABSENTEE WITHOUT LEAVE

At the time of his surrender he was wearing (Military Uniform) or (Civ
(Civ Clothes)

Signature of Provost-Marshall, Assistant Provost-Marshall or other officer or the Commanding Officer of the portion of His Majesty's forces or the officer, warrant-officer or non-commissioned officer in charge of the detachment of the Canadian Provost Corps, Canadian Army into whose custody the above named person was taken on surrender. (Strike out part inapplicable)

LONDON.
13-NOV-42

Officer i/c Detention Room,
No. 6 Cdn. Provost Coy.

Exhibit A

Expense Voucher Re— Exhibit 6 Ref: K.R. & O. (Can) 539

Reg. No. B-10267 Rank Trp Name Fedor, A Unit 3 6 AC R.U.

The following expenses were incurred in apprehending and returning the M/N Soldier to ~~his~~ Unit from London from Liverpool

Date	Particulars	Amount		
13/11/42	Escorts return fare from LONDON To Liverpool (½ portion		15	2
	Prisoners single fare to LONDON From Liverpool		15	2
	Prisoners fare from To			
	Escorts & Prisoners expenses for ~~Bed~~, Meals, Bus fares (½ portion		5	5
	Total £	1	15	9

I certify that the above statement of Expenses is Correct, and that the amounts are fair and just.

..... Lieut.

Officer Issuing Railway Warrant and Expense monies
No. 6 Provost Company, Canadian Provost Corps, London.

C.M.H.Q. 1000/55
40/P & S/483

Exhibit C

I, CERTIFY that the man whose personal description is given below surrendered himself to* Gnr. 121 A. Bamford at MAIN BRIDEWELL, at (hour) 1725 hrs on the 10th day of Nov, as being No. B. 102614 (Rank and Name) Trooper Anthony FEDOR a deserter (or absentee without leave) from Canadian Army Corps and it appears to me from his confession that he is a deserter or absentee without leave.

* After the word "to" to be inserted the name and rank of the police officer concerned.

Age 21. Height 5" Feet 8 Inches

Complexion Pale. Hair Dk Brn. Eyes Brn.

Marks

In uniform or plain clothes Plain clothes

Probable Date and Place of Attestation	Sept. 1940. Ontario. Canada.
Probable Date of Desertion or beginning of absence, and from what place	28. 9. 42. Blackdown.

T. Heatley Insp.

Signature of Officer of Police in charge of MAIN BRIDEWELL Station.

11-11-42 Date of Signature.

Army Form O.1617
R.A.F. Form 1617

PART 2.

This portion of the Form should be completed and forwarded to the Officer Commanding the man's unit to whom Part 1 of this Form is sent, as soon as all expenses have been ascertained.
(It should not be detached from Part 1 unless delay in completion is unavoidable.)

Statement of Expenses chargeable to Army or Air Force Funds incurred by the Police in the case of

No.

who surrendered to the Police at on

Payable to

CERTIFIED that this statement of expenses is correct.

Superintendent or Officer in charge of Police Station at

Date of Signature.

Previous sheet destroyed 18-7-42

No. B-1026 Name Pr. Fedor A. Sqn., Battery, or Company [illegible] Corps C.A.C. Date of enlistment 22-7-41 G.C. Badges Service or Proficiency Pay

M.F.M. 6 (A.F.B. 122) 175M—7-41 (1219-20) H.Q. 1772-20-1632

Date of last entry in Company Conduct Sheet 19-1-42 No. and date of last drunk N11 Period not reckoning towards freedom from extra fine Sheet No. One Signature O.C. Company, etc. [illegible] Character

Place	Date of offence	Rank	Cases of drunkenness	OFFENCE	Names of Witnesses	Punishment awarded	Date of award or of order dispensing with trial	By whom awarded	Remarks
				CERTIFIED TRUE COPY					
				for D.R. Monck-Lieut.					
				#3 C.A.C.R.U. RECORDS OFFICER					

(P.T.O.)

M.F.B. 355
27M—5-41 (372-2)
H.Q. 1772-39-620
A.F.B. 296

STATEMENT AS TO CHARACTER AND PARTICULARS OF SERVICE OF ACCUSED

Number	Rank	Name	Regiment (or unit)
B102617	Tpr.	Anthony FEDOR	No. 3 CACRU

1. The following is a fair and true summary of the entries in the Service and General Conduct sheets of the accused, exclusive of convictions by a Court-Martial or a Civil Court, of summary awards under Section 47 of the Army Act and of cases in which trial has been dispensed with.

	Within last 12 months	Since enlistment or appointment
For	times	times
For	times	times
For	times	times
For	times	times

or,

There are no entries in the conduct sheets of the accused.

NOTE.—If the charge is for drunkenness, the entries for drunkenness must be stated separately.

2. The accused has not been previously convicted

or,

3. The accused is not under sentence at the present time.

or,

4. The accused has been in confinement awaiting trial on the present charges, for 2 days in civil custody, and 7 days in military custody, making a total of 9 days in custody, of which days were spent in hospital.

5. The present age of the accused according to his attestation paper is 22

6. The date of his attestation specified in his attestation paper 19 Jul 41

9. The accused is in possession of or entitled to no military decoration, or military reward (

10.

Mahoney Lt
Pres

11. (In the case of an officer.) The accused holds in the Royal Canadian Air Force the rank of Permanent Force unit dated ....., and in his regiment (or corps), the rank of ..... dated .....

12. The accused has served as a non-commissioned officer continuously, without reduction, to the present date:—

..... Date of promotion.

In the rank of ..... years.

In the rank of ..... years.

In the rank of ..... years.

NOTE.—If any matter in any of the above paragraphs cannot be stated from the Regimental books, the paragraph must be struck through.

SCHEDULE

Of convictions by a court-martial or civil court, of summary awards under Section 47 of the Army Air Force Act, and of cases in which trial has been dispensed with of accused, Number ..... Rank ..... Name ..... of ..... Unit Regiment

NOTE.—A verbatim extract from the regimental books stating these convictions and dispensations with trial must be inserted.

Description of Court by which tried	Date and Place of Trial	Charge upon which convicted	Sentence of the Court	Punishment Remitted

I hereby certify that the foregoing schedule of convictions and dispensations with trial is a true extract from the regimental books in my custody.

Signed this 20 day of Nov. 42 Capt & Adjt 3 CACRU.

The above statement (with the schedule of convictions and of cases in which trial has been dispensed with) is read, marked ..... signed by the president, and annexed to the proceedings.

I, B102617, Tpr. Fedor, A., desire to have an officer assigned to represent me at my trial by Court-Martial.

A Fedor

B102617 Tpr. Fedor, A.

November 16th, 1942.

H.Q.C. 55-F-862

CONFIDENTIAL

DEPARTMENT OF NATIONAL DEFENCE—OTTAWA, CANADA

SUBJECT

FIELD GENERAL COURT-MARTIAL

FAVELL, THOMAS GERALD H-6697 [redacted]

CENTRAL REGISTRY	DATE	R.A. OR L.F.	INITIALS	REFERRED TO	FOR	INITIALS	DATE
					(If purpose for which file is required cannot be expressed on one line, enter here "First Minute").		2-12-46

CONFIDENTIAL
H.Q.C. 55-F-862

OVERSEAS COMBINED

NOTICE

1. Files should be removed no longer than absolutely necessary. If a file is frequently needed at short intervals, it is better to B.F. it for two or three days than keep it out of Central Registry indefinitely. This ensures it being completed and kept in order, and also gives other officers an opportunity to see same.
2. Central Registry should be notified whenever a file is passed direct by officers should.
3. Unregistered letters should bear the official file number.

PASS THIS FILE IN ENVELOPE

SCHEDULE.

PART I. PLEA(S), FINDING(S) AND SENTENCE.

Accused: H 66972 Fus Thomas Gerard Farrell

Charge. (Insert "alternative" where applicable.)	Plea. (See Instrs p 2.)	Finding. (See note below.)	(Space for use as required for further charges, accused charged jointly, special findings, etc.)
1st AA 8 (2)	Not Guilty	Guilty	
2nd AA 9 (2)	Not Guilty	Not Guilty	
3rd AA 19.	Guilty	Guilty	
4th AA 5 (2)	Not Guilty	Guilty	
5th AA 40	Guilty	Guilty	
6th			

(Note: As to findings for lesser offences see AA 56, RP 44; findings on alternative charges see MML p 483 fn 4 para 2, RP 44; special findings see RP 44 and MML p 753, and in loss of kit see RP 44 fn 6.)

At present undergoing for ~~[illegible]~~ beginning ~~[illegible]~~ (1)
(1. Insert sentence being served, or delete, if not applicable. See RP 46(A). Information should be found on MF B355 or AF B296.)

Time in confinement awaiting present trial—a total of 10 days, of which nil days were spent in hospital.(1)
(1. See RP 46(A) fn 2. Information should be found on MF B355 or AF B296 admitted in evidence under E2.)

Sentence Awarded by the Court:

To undergo detention for a period of ninety days

(Sgd) K (an R) Stacey Maj — 19 Sept 45 — (Sgd) J McCameron Major/Pres
Judge-Advocate, if any. Date awarded. President. (RP 45, 50.)
(See back of Convening Order as to assembly and disposal of record after trial.)

PART II. MINUTE WHERE CONFIRMATION RESERVED. (AA 54(5), RP 120(F), MML p 760.)

Date ..... (Sgd) ..... Commanding .....

PART III. DECISION OF CONFIRMING OFFR ON FINDING(S) AND SENTENCE.

(For duties and powers see AA 54, 57, RP 37(D) fn 6, 46(A), 51-56, 120, MML pp 759-761, KR Can 567-577. Acquittals require no confirmation and cannot be revised: AA 54(3). Sending back finding or sentence for revision by Court: AA 54(2), RP 120(G). If not confirmed, accused may be tried again: AA 157, MML p 64. Minute of confirmation or non-confirmation may be altered before promulgation: RP 53, MML p 65. Quashing after promulgation: KR Can 573. Duties and powers of reviewing offrs: AA 57, 57A, RP 53A, 54. The Confirming Offr must sign here personally. AA 172 fn 1.)

My decision on the finding(s) and sentence set forth in Part I is:

Confirmed

~~I direct that the accused be not committed to prison or detention barracks until further orders.~~ (1) (1. AA 57A. Delete if not used.)

Date 20 Sep 45 (Sgd) [illegible] Rank
Commanding C.R.A., 2 CDN. DIV.
Confirming Officer.

PART IV. PROMULGATED AND EXTRACTS TAKEN. (RP 53, KR Can 576, 577.)

Accused.	Date.	Signature of Offr.
H 66972 Fus Farrell T. G.	20 Sep 45	R Tetley-Tolmie Capt.

ALL DELETIONS AND ALTERATIONS WILL BE INITIALLED.

RECEIVED SEP 1945 JAG BRANCH C.M.H.Q.

RECORDED AT CMHQ IN AB 160 5T-62

FIELD GENERAL COURT-MARTIAL

CFA98 (In lieu of AB42) 40/P & S/1598 (2864)

Convened by Order of F.D. LASCELLES, Brig Comd CRA 2 Cdn Inf Div dated 17 Sept 45

ACCUSED.

(As to the trial of two or more charged jointly see RP 16, 71, 109. As to reasons for showing (a) permanent or confirmed rank, and (b) appmt, A/rank or A/appmt, if any, see AA 182, 183, fns, KR Can 308, 328, 330.)

Number.	(a) Prmnt R. (b) Appmt, A/R or A/Appmt.	Full Christian Names.	Surname.	Unit.
H 66972	Fus	Thomas Gerard	Farrell	RLAA RCA

PROCEEDINGS REVIEWED 28 Sept 45

[illegible] Capt.
REVIEWING OFFICER, JAG BRANCH C.M.H.Q.

PROCEEDINGS REVIEWED

PROCEEDINGS OF TRIAL.

Held in the Fd in (country) Holland on (date(s)) 19 Sept 45

RECORD FORM A—OPENING PROCEEDINGS AND ARRAIGNMENT.

A1. The President, Members, ~~waiting Member~~, JA, if any, ~~and Offg Recdg Asstr~~, if any, assemble, and the Court is closed.

(PRINTED MATTER, NOT IN ITALICS FOR GUIDANCE, WILL BE DELETED, IF NOT USED OR APPLICABLE, AND INITIALLED BY PRES OR JA. The Schedule referred to throughout is on p 4. Citations do NOT include all relevant fmn ROs. For guidance on procedure when a variation in this form arises, see form for GCM in MML pp 741 to 759. A brief record of such variation will be made and given a number having reference to appropriate or preceding para number herein. See back of Convening Order, CF A95, for oaths and instrs on how to record addresses, evidence, etc, which instrs are hereafter called "Notes". As to general provisions for conducting the trial see AA 53, RP 56, 63-70, 73, 74, 94, 103, 119, 132.) 37/90

A2. The President initials and lays before the Court the Convening Order and Charge Sheet(s) attached thereto.(1) The Court is satisfied that it is properly convened and constituted(2), accused is [illegible] amenable to military law, and each charge discloses an offence.(3)
(1. As to use of Summary of Evidence see RP 17 fn 6. 2. AA 49, 50, RP 105-107. 3. RP 11-13, 23, 24.)

A3. The Court is opened. The accused is [illegible] brought before the Court. At 1400 hours trial commences.

A4. The Prosecutor produces a Medical Certificate that accused is (~~not~~) fit to undergo trial by court-martial.(1) The Prosecutor informs the Court that accused elected to be tried by court-martial instead of being dealt with summarily [illegible].(2)
(1. KR Can 557. 2. AA 46(8), RP 60 fn 1. For effect see KR Can 563(c). Delete, if not applicable.)

A5. President to accused: Do you object to F.E. Balm as interpreter? Ans No.
The Interpreter is sworn.(1) ~~Do [illegible]~~
~~The shorthand writer is sworn.~~(1) as shorthand writer? Ans Nil
(1. RP 72. Delete, if none employed.)

A6. The Convening Order and names of the President and Members of the Court are read to the accused.(1) President to accused: Do you object to be tried by me as President or by any of the Members of the Court? Ans No.(2)
(1. RP 110. 2. If no objection, waiting member retires. RP 68(8). If objection, see procedure AA 51, RP 25, 71, 18, MML p 742.)

A7. The President, Members, JA, if any, and ~~Recdg Asstr~~, if any, are sworn.(1) The following are the ranks, names and units of the offrs comprising the Court, etc:

President	Maj	J McCameron	7 Cdn Med Regt RCA
Member	Capt	J.E.L. Dyke	6 Cdn Fd Regt RCA
Member	Lieut	J.E. McLean	6 Cdn Fd Regt RCA
Judge-Advocate	Maj	K (an R) Stacey	DAG 2 Cdn Inf Div
Prosecutor	Lieut	A. Saunders	3rd LAA Regt RCA
Defending Offr	Capt	H.K. Clarke	3rd LAA Regt RCA

Questions by President: Is the Prosecutor a lawyer? Ans Yes Is the Defending Offr a lawyer? Ans Yes (2)
(1. RP 26, 27, 109, 111. List of offrs under instr will be returned separately with proceedings for information of Conv Offr.)
(2. If Pros a lawyer and Def Offr not, accused is entitled to an adjournment when RP 59 (B) and fn 2 were not followed. See DI p 2.)

A8. The accused H 66972 Fus Thomas Gerard Farrell before arraignment make(s) (no) (~~a~~) plea. (1)
(1. If a special plea is made for separate trial on one or more charges (RP 62(E), 106), or as to the jurisdiction of the Court (RP 34, 35(A), 113), or in bar of trial (RP 36), or as to accused's mental fitness to stand trial (AA 130, RP 57), or by one of several accused charged jointly to be tried separately (RP 16, 71), such plea, the addresses made in support or against, the evidence, if any, and finding are recorded per Notes. For forms of record see references in fns to RoP cited. Insert in AB rank and name of the accused making the plea.)

A9. The accused is duly arraigned (separately) on all charges in the charge sheet.(1) The accused does not object to any charge.(2) There is no amendment to be made to the Charge Sheet.(3) The President records the pleas in Part I of the Schedule.
(1. RP 31, 112. See para 1 of Instrs p 2. When more than one Charge Sheet see RP 62; when several accused to be tried separately see RP 71(C), and use separate copies of CF A96 to record proceedings. 2. RP 32, RP 33. If otherwise, delete and make appropriate record per Notes.)

A10. The Court (is closed and) considers the Instrs on Procedure after Arraignment at top of p 2. The proceedings are continued on Record Form D. 4 B

PRESIDENT OR JA WILL INITIAL ALL DELETIONS AND ALTERATIONS.

INSTRUCTIONS ON PROCEDURE AFTER ARRAIGNMENT.

1. *The accused may not plead or be found Guilty on more than one of two or more charges laid in the alternative. (RP 37(A).) As to withdrawal of alternative charges by Prosecutor see RP 35(C). No other charge can be withdrawn for any reason without authy from Convening Offr. If Convening Offr concurs, Court may accept plea of Guilty to lesser, etc, offence. (RP 44(H).) Accused may change a plea of Not Guilty to Guilty during trial. (RP 38.) As to refusing to plead or not pleading intelligibly see RP 35(A). As to plea when sentence may be death see RP 35(D).*

2. *The proceedings on each charge sheet (RP 62) after arraignment will be conducted as follows in the respective circumstances stated :*

I. If pleas to all charges are GUILTY, use Record Form B below.

II. If pleas to all charges are NOT GUILTY, use Record Form D on p [redacted] 3.

III. If pleas to some charges are GUILTY and to other charges are NOT GUILTY and,

(a) Such mixed pleas occur when there are no alternative charges in the Charge Sheet, use Record Form C below. (RP 37(A).)

(b) Such mixed pleas occur in a set of two or more charges laid in the alternative, see RP 37 (A) and fn 2 as to discretion of Court, (i) to try the accused on all such alternative charges as if he had pleaded Not Guilty thereto, or, (ii) to record the pleas as the findings of Court. After deciding between (i) and (ii), Court will proceed under foregoing instrs as may be appropriate to result of its decision. See MML p 744 Instrs (2).

3. *As to responsibility of President to accused see RP 59, 60(C) ; powers and duties of JA see RP 103 ; duty of Prosecutor see RP 60(A) (B) ; duty and privileges of accused and Defending Offr see RP 60(C), 87(C), 91, 92 ; swearing and withdrawal of witnesses from Court see RP 81, 82 ; questioning of accused see RP 80, 87(C), 92(B), and of witnesses see RP 83-85 ; calling or re-calling of witnesses by Court etc see RP 75-79, 86, 116 ; use of Summary of Evidence at Trial see RP 17(E) fn 6 ; and responsibility of JA or Pres to record proceedings see RP 94, 96.*

RECORD FORM B—PROCEEDINGS ON PLEAS OF GUILTY TO ALL CHARGES.

B1. The President or JA, if any, complies with RP 35(B) by explaining to the accused the nature and meaning of the charge(s)(1), and that on his plea of Guilty there will be no regular trial but merely a consideration of the sentence to be awarded after he has been given an opportunity to make a statement in reference to the charge(s), call witnesses as to character and make an address in mitigation of punishment.(2)
(1. RP 35 fn 3. 2. MML p 54 para 47.)

B2. President to accused : The Court will now receive any statement you desire to make in reference to the charge(s).(1) If it appears from your statement that there are circumstances which indicate that you do not understand the effect of the plea of Guilty(2), or which show provocation or extenuation in respect of which in your interest the witnesses for the Prosecution should be examined(3), we shall advise you to change your plea to Not Guilty. In making a statement you will not be sworn or subject to cross-examination ; and anything you say will not be used in evidence against you after you change your plea. If, however, it appears to the Court that your statement affects only the amount of punishment to which you are liable, you will not be advised to change your plea and you will be given an opportunity later to prove your statement by sworn testimony, if you so desire.(4)

President to accused : Do you wish to make a statement ? Ans no (5)
(1. RP 37(B). 2. RP 37(D) fn 6. 3. RP 35(B) fn 5 para 3, MML p 54 para 47. 4. See para E3 of Record Form E. 5. Statement, if any, recorded per Notes.)

B3. ~~The Court considers the accused's statement.~~(1) The Court decides (not) to advise accused to change ~~his (their) plea(s)~~ of Guilty to Not Guilty on [redacted] charge(s). The accused [redacted] informed, and he (they) change(s) ~~his (their) plea(s) on [redacted] charge(s)~~. Part I of the Schedule is amended accordingly.
(1. Court may be closed to consider the statement. Delete whole or part not used.)

B4. On the charge(s) to which the plea(s) of Guilty is (are) not changed the President records finding(s) of Guilty in Part I of the Schedule.(1)
(1. RP 35(B). If any plea(s) is (are) changed, use Record Form C or D as appropriate.)

B5. The Summary of Evidence is marked Ex X, initialled and read aloud by the President.(1)
(1. If there is no Summary, or if it is inadequate, comply with RP 37(B). If there is any evidence inconsistent with any plea standing as Guilty, Court will advise accused to change such plea and, if changed to Not Guilty, try such charge(s) by use of paras D1 to D8 inclusive of Record Form D on p 3. RP 37(D).)

B6. The accused having been found Guilty on one or more of the charges, the proceedings are concluded by using Record Form E on p 3.

RECORD FORM C—PROCEEDINGS ON MIXED PLEAS OF GUILTY AND NOT GUILTY.

C1. As to the charges on which accused pleaded NOT GUILTY the trial is continued by using paras D1 to D8 inclusive of Record Form D on p 3 before proceeding with C 2.(1)
(1. RP 37(A) (E).)

C2. The charges on which accused pleaded GUILTY are read to him (them) again, and the trial is continued by using paras B1 to B5 of Record Form B above.(1)
(1. Under B5 such parts only of the Summary of Evidence are read as relate to the charges dealt with under C2. If any plea is changed to Not Guilty, trial thereon proceeds by complying with paras D1 to D8 inclusive in Record Form D on p 3 and making an appropriate record thereof on a separate sheet.)

C3. The accused having been found Guilty on one or more of the charges, the proceedings are concluded by using Record Form E on p 3.

PRESIDENT OR JA WILL INITIAL ALL DELETIONS AND ALTERATIONS.

RECORD FORM D—PROCEEDINGS ON PLEAS OF NOT GUILTY TO ALL CHARGES.

D1. President to accused : Do you wish to apply for an adjournment on the ground that any of the rules relating to procedure before trial have not been complied with, and that you have been prejudiced thereby, or on the ground that you have not had sufficient opportunity to prepare your defence ? Ans no (1)
(1. If "yes", see RP 39(A) for procedure. Statement or evidence, if any, is recorded per Notes.)

D2. The Prosecutor makes (~~no~~) opening address.(1)
(1. RP 39(B), 60(A) (B), 90, 92(C) (D). Record address per Notes, subject to RP 95(C).)

D3. The evidence for the Prosecution is taken.(1)
(1. RP 39(C), 114, KR Can 555. Record evidence per Notes. As to Prosecutor giving evidence himself see RP 39(D) (E).)

D4. The Prosecution is closed.(1) The Defending Offr submits that the evidence for the Prosecution does not establish a prima facie case against the accused on the ~~[redacted]~~ fourth charge(s).(2) The Court is closed, and considers the submission.(3) The Court is re-opened, and the President announces that the submission is disallowed on the fourth charge(s), ~~and allowed on the charge(s)~~, and that, accordingly, the trial will proceed on the former, ~~but the accused is (are) found Not Guilty on the [redacted] charge(s)~~.(4)
(1. Delete remainder of this para. If submission not made. 2. Arguments on submission, answer and reply are recorded per Notes. 3. RP 40 fn 1. See MML p 72 paras 12-14 and p 81 para 42. 4. Delete part not used. If accused acquitted on all charges, use second alternative in para D8.)
NB : If trial proceeds, accused must be allowed great latitude in making his defence, and the Court should not stop his defence solely on ground of irrelevance. (RP 60(C), 114, 115.)

D5. President to accused : You will now proceed with your defence.(1) You may, if you wish, give evidence yourself on oath as to the facts or your character or both, in which case you will be subject to cross-examination.(2) You may, however, make a statement without being sworn, and you will not be subject to cross-examination.(3) But a statement which could have been made on oath will not carry with the Court the same weight as sworn testimony.(4) You may call witnesses in your defence and as to character, whether you give evidence or make a statement or do neither.

President to accused : Do you wish to give evidence yourself as a witness, make a statement, or do neither ? Ans to give evidence on oath. Do you intend to call witnesses on your behalf ? Ans no. Are they witnesses as to character only ? Ans No
(1. RP 155. 2. RP 40(A), see 80(D). 3. RP 40 fn 10. 4. RP 40 fns 2, 9.)

D6. Consequent on the answers recorded in para D5 the appropriate procedure for the defence is followed.(1)
(1. RP 114, 115, 116. For procedure see Notes on back of Convening Order, CF A95. Evidence for accused as to his character should, if in his interest, be given before the finding. See RP 46(A) fn 1, 86(C). Note the further opportunity in para E1 of Record Form E. Record per Notes addresses, statement, evidence and any summing up by the JA under RP 42, 103(e).)

D7. The Court is closed to consider the finding(s).(1) The finding(s) of the Court is (are) recorded in Part I of the Schedule.(2) The Court is re-opened.
(1. RP 43, 117(A). See Notes in Part I of Schedule. 2. RP 44(A).)

D8. The President announces the findings, ~~of Guilty~~, of Not Guilty, and states to the accused that the finding(s) of the Court on the 1st charge(s), being subject to confirmation, will be promulgated later.(1)
Or, ~~The President announces that the accused is found Not Guilty on all charges and is to be released forthwith, and that the proceedings are accordingly terminated.~~ Part I of the Schedule is dated and signed.(2)
(1. AA 54(3) (6), RP 45, 120(A). 2. AA 54(3), RP 45, 117. This alternative announcement is not applicable when there are pleas of Guilty outstanding and dealt with under Record Form B or C.)

D9. The accused having been found Guilty on one or more of the charges, the proceedings are concluded by using Record Form E below.

RECORD FORM E—PROCEEDINGS ON CONVICTION BEFORE SENTENCE.

E1. President to accused : Do you wish to give evidence yourself or to call any witnesses as to your character ?(1)
Ans no
(1. If evidence has already been given by accused or his witnesses as to his character, delete this para. RP 37(C) fn 4, 46 fn 1. Accused and witnesses are sworn. Evidence recorded per Notes.)

E2. The Prosecutor produces Statement(s) as to Character and Particulars of Service(1), and certified true copy (copies) of Conduct Sheet(s)(2), purporting to refer to the accused, which he submits to the Defending Offr for examination, and then to the Court for admission in evidence. The Court is satisfied that these documents refer to the accused, because (i) they purport to be signed in the manner required by AA 163(l) (g) (h), and (ii) they purport to refer to (a) soldier(s) having the same number, rank, name and corps as the accused. Admitted in evidence and marked Ex C and Ex D respectively.(3)
(1. MFB 355 or AFB 296. 2. MFM 6. 3. RP 46, KR Can 558. If above documents not produced, see RP 46 fn 1 para 1.)

E3. President to accused : Do you wish to address the Court on the Statement(s) and Conduct Sheet(s), and in mitigation of punishment ?(1) Ans [redacted](2)
(1. RP 37(C), 46(D). 2. Address, if any, recorded per Notes. Court should permit accused or his witnesses to prove on oath anything here or previously stated which would affect the amount of punishment. RP 37(F) fn 7.)

E4. The President states that the Court is closed to consider the sentence, and that the sentence to be awarded by the Court, being subject to confirmation, will not be announced, but will be promulgated later, and the proceedings in open court are accordingly terminated.(1)
(1. AA 54(6), RP 120(A).)

E5. The Court considers the sentence.(1) The President records the sentence in Part I of the Schedule, which is dated and signed by him and the JA, if any.(2)
(1. When several accused tried separately see RP 7(D). One sentence only, comprised of the punishment or punishments laid down in AA 41, 44 and its proviso, is to be awarded to cover all charges in all charge sheets on which accused found guilty. RP 48. As to sentences see AA 44, 138, 182, RP 46-50, 69, 118, 119(A), KR Can 308, 330, 563-566, Overseas RO 309, 2323, MML p 60, 757-759. As to sentences assigned for civil offences by the law of England see AA 41(5), MML p 130. When accused already under sentence of imprisonment or detention see AA 44(1B), 68(1), KR Can 564. 2. RP 50. As to release from arrest by Confirming Offr see KR Can 567. As to assembly and disposal of record after trial see instrs on back of Convening Order.)

PRESIDENT OR JA WILL INITIAL ALL DELETIONS AND ALTERATIONS.

I HEREBY CERTIFY that I have this morning examined H66972 Gnr FAWEL,T.G., 3 Cdn L.A.A.Regt and in my opinion he is ~~UNFIT~~ FIT to undergo trial by Court Martial

DATE: 19 Sep 45

D.W. Kwasnick Capt
MEDICAL OFFICER

jvc

FIELD GENERAL COURT-MARTIAL

(Whether the accused to be tried is under his comd or not, a FGCM may on application to him be convened by any offr of Cdn Army Overseas, or of any other force if authorized in law, in immediate comd of troops on active service, subject to RP 105(C) and restrictions imposed by appropriate authy. AA 49, 50, RP 104-107, 114. As to the duties and privileges of the Convening Offr in dealing with the application see MML Chap V paras 20 and 23, RP 87(B).

There should be a separate Convening Order for each person to be tried separately by the same Court. RP 71(C), 109. As to separate charge sheets see RP 62, and as to separate trial on charges in the same charge sheet see RP 108. As to two or more accused charged jointly see RP 16, 109. As to reasons for showing (a) permanent or confirmed rank, and (b) appmt, A/rank or A/appmt, if any, see AA 182, 183, fns, KR Can 308, 328, 330.)

ACCUSED.

Number.	(a) Prmnt R.	(b) Appmt, A/R or A/Appmt.	Full Christian Names.	Surname.	Unit.
H66972	Gnr		Thomas Gerald	FAVEL	3 Cdn LAA Regt

CONVENING ORDER.

1. Whereas complaint has been made to me, the undersigned, that the person(s) named above as the accused, being subject to military law, has (~~have~~) committed the offence(s) set forth in the Charge Sheet(s) attached and on (*date*) 17 Sep 45 endorsed by me, (~~or by any officer of my unit or unit~~)" To be tried by Field General Court-Martial ".

2. And whereas I am of opinion that it is not practicable that such offence(s) should be tried by an ordinary General Court-Martial ; ~~[and that it is not practicable to delay action to try for reasons connected with the public interest]~~

(*Delete part in brackets when not required for compliance with RP 105(C).*)

3. I hereby convene a Field General Court-Martial to try the said person(s), and to consist of the Offrs appointed or detailed hereunder.

4. ~~I also appoint [Alternate Offrs (and the Court, [if] [as] President, [in the order stated] attached hereto].~~

(*AA 49, RP 106(B), 107(A). Delete the whole or part, if not applicable.*)

5. I also appoint as Judge-Advocate thereat the Offr mentioned hereunder.

(*RP 106(E). Delete, if none appointed.*)

PRESIDENT.

(Rank.)	(Must be named. RP 106.)	(Unit.)
Major	J M Cameron	7 Cdn Med Regt

MEMBERS.

(Rank.)	(Named or detailed. RP 106.)	(Unit.)
Capt	to be detailed by CO 6 Cdn Fd Regt	6 Cdn Fd Regt
Lt	to be detailed by CO 6 Cdn Fd Regt	6 Cdn Fd Regt

WAITING MEMBER.

(Rank.)	(Named or detailed, if any. RP 106.)	(Unit.)
Lt	to be detailed by CO 7 Cdn Med Regt	7 Cdn Med Regt

JUDGE-ADVOCATE.

(Rank.)	(Must be named, if any. RP 106.)	(Unit.)
Maj	K Stiver	HQ 2 Cdn Inf Div

On Active Service in the Fd

in Holland (*Country.*)

(*Signed personally. RP 105 fn 2.*) Brig (*Rank.*)

Dat 17 Sep 45 Commanding CRA 2 Cdn Inf Div
Convening Officer.

CONVENING OFFR WILL INITIAL ALL DELETIONS AND ALTERATIONS

4/38A CFA 95 (In lieu of AFA 3) 40/P & S/1607 (6145)

(*See overleaf for oaths and notes for use on trial.*)

CHARGE SHEET

The accused, H66972 Gnr Thomas Gerald FAVEL, 3 Cdn L.A.A. Regt, a soldier of the Canadian Army Overseas, is charged with:

FIRST CHARGE
Sec 8(2)
Army Act

WHEN ON ACTIVE SERVICE, STRIKING HIS SUPERIOR OFFICER

in that he,

in the Field, on 10 Sep 45, struck with his fist in the face, B22124 Regimental Sergeant Major HANG, H.L., No. 29 Recreation Coy.

Second Charge
Sec 9(2)
Army Act

WHEN ON ACTIVE SERVICE, DISOBEYING A LAWFUL COMMAND GIVEN BY HIS SUPERIOR OFFICER,

in that he,

in the Field, on 10 Sep 45, did not leave the TRIANON CLUB in UTRECHT, HOLLAND, when ordered to do so by B22124 Regimental Sergeant Major HANG, H.L., No. 29 Recreation Coy.

THIRD CHARGE
Sec 19
Army Act

WHEN ON ACTIVE SERVICE, DRUNKENNESS,

in that he,

In the Field, on 10 Sep 45, was drunk.

FOURTH CHARGE
Sec 8(2)
Army Act

WHEN ON ACTIVE SERVICE, USING INSUBORDINATE LANGUAGE TO HIS SUPERIOR OFFICER,

in that he,

in the Field, on 10 Sep 45, when ordered to leave the TRIANON CLUB, UTRECHT, HOLLAND, said to B22124 Regimental Sergeant Major HANG, H.L., No. 29 Recreation Coy., "Fuck Off" or words to that effect.

FIFTH CHARGE
Sec 40
Army Act

WHEN ON ACTIVE SERVICE, CONDUCT TO THE PREJUDICE OF GOOD ORDER AND MILITARY DISCIPLINE,

in that he,

in the Field, on 1 Sep 45, improperly and without authority took and used a Canadian Military Vehicle No. CM5538437.

(G.G.K. Peake) Lt-Col
Commanding Officer
3 Cdn LAA Regt

To be Tried by RCCM
In the Field
17 Sep 45

In the Field
15 Sep 1945

1st Witness for Prosecution:

PJ 22124 Pte Stang H.L. # 29 Recreation Coy
being duly sworn states:-
On the 10 Sept 45 I saw the accused (Voets, W.) when making my rounds, a bandsman came up to me and as a result I went with the bandsman and found the accused in the band room drinking beer which in my presence he took from the Bandsmans tray.

I told the accused who I was namely Pte Stang in charge of the club and showed him my rank on my chest patches and told him to leave the club and not to cause any further trouble. He, the accused, then said to "fuck off" he didn't give a damn who I was and took some more beer from a tray on the table.

I then called him to attention - he came to attention - I asked him if he could read. He said "yes" I told him I was giving him a written order to leave the club which I did and he read it back to me. It was as follows "This is an order for you to leave the club at once signed by me. The order is produced and marked "A". The accused continued to refuse and I went up to call up the provost and in the hallway in front of the Check room he attacked me from the rear having followed behind me. The accused struck me a blow across the temple with his fist and caused a bruise over the left eye. He then grabbed me by the neck and I threw him on the floor and tore

1st Witness for Pros Contd.

bandsmen held him down. I ordered Cpl and a soldier present to place him under close arrest, which they did. I then left Pro. and he was taken away.

Cross Examination.

When I went into the bandsmens Room I was wearing blue Pants (red stripe) and white Jacket. The bandsmen were wearing black trousers with black stripe & white Jackets with a red band or tassel on a belt. I made a statement to the Pro. and one on the Summary Evidence. (Statement given to witness made to Pros. to read over.) The statement as to facts is what I gave them (copy) statement put in as Ex "B" at request of def Off.) (The statement is read to witness) The accused struck no blows at me in the bandroom he & I were the only ones present then before he attacked me in the hallway. The bandsmen were in the next room. He attempted to strike me when I gave him the written order.

Re Examination

I was struck in front of the check room.

J.D.

The accused was drunk when I first saw him. I didnt put him under arrest because I didnt want a fuss. If I were to do it again I would have ~~done so~~ when I first saw him. I am sure he knew who I was and also my rank. He was not that drunk. He seemed to walk quite well. On giving the written order he said what he said. I paused and saw he was not going to obey. I paused about ½ Minute. Rule of Procedure 83 b complied with.

2nd Witness for Pros.

J. Elkesteen, Hermans, Elconenstraat 44 Utrecht, Holland, being duly sworn states thru Interpreter Vdlw. Has been sworn as follows:
On the night of 10th Sept 45, the accused Powell (Pvt) stood with us on the side (Sandman)
of the table where our beer was served.
The accused took the Plaintiffs beer & the accused then took our glasses of beer and put them on the table. He then gave each of us our beer back again except the Complt. Player.
R Sgt Mr Hank came along and talked to the accused. I saw R & Mr Hank order the accused to go with him. Mr Hank went out first and the accused followed him. I saw Mr Hank laying on the floor. I then went out to look and I took the accused away from Mr Hank. They were fighting. I then with others in the band, took the accused off Mr Hank. Comrades of the accused came and accused went out with them.

Cross Ex by Def:

Mr Hank (R Sgt) ordered the accused to go with him by making a movement which indicated that the accused was to follow him. I did not see Mr Hank give the accused a piece of paper. The accused & Mr Hank were already fighting when I saw them near the check room.

No re-dam.

2nd Witness for Pros. Cont.

Q.D. R.D.M. Shank indicated by his hand for the accused to follow him which the accused did. ~~He was~~ The accused was not 100% drunk but he was 60 to 70% drunk.

Rule of Procedure 83 B. Complied with.

3rd Witness for Pros.

Elizabeth Van Rooy, Bilderdijkstraat 44, Utrecht-Holland, being duly sworn states the following:-

(The witness identifies the accused) I was in the check room at the ~~Casino~~ Prinsenhof Garden Utrecht and the accused looked A.W.O.L. on 10 Sept 45 with a glass of beer in his hand. He went away and after ~~ten~~ fifteen minutes it was very quiet. Mr Shank came to me and followed by the accused. The accused took Mr Shank by the throat and I called for help. Members of the band and soldiers came along. They took the accused and Mr Shank apart. They then all went away.

Cross Q. and A.

The accused followed Mr (R.D.M. Shank) immediately. The accused was 50-50 drunk when he was looking A.W.O.L. He was very calm. No re-exam.

J.A. I did not see the accused strike Mr Shank he took him by the neck. They fell down together then I did not see anything.

Rule of Procedure 83 B Complied with.

The Prosecution has no further witnesses.

Dft Witness for Defence.

H 66972 Sgn Thomas Leonard Daniel 13 Can Coy

1st witness for Defence.

the accused is duly sworn and states :-

I am a cdn ~~Sldr~~ (Soldier). I am 20 years of age. My army age is 22. I was 16 when I joined the army.

On sept 10/45 in the morning I was informed I was going to the 3 Cdn LAA ~~Battery~~ Reg. At 1000 hrs I went D Unit Canteen at Jubilee Stadium. I drank here until 1330 hrs. I went to Whitle Park, our truck was to be there at 1400 hrs. I waited until 1410 and no truck. I went to Cafe with others, got a bottle of wine and drank it. We also bought a bottle of Cognac ~~there~~ ; one came back our vehicle was there and were taken D 3 Cdn LAA Reg at Utrecht. Had supper then I went into Utrecht - went directly D the new Canteen. I went in and had 8 or 9 beers, I had drank the Cognac (I and another fellow). I remember having a hamburger. I went D barracks. I remember talking D Canadian at Dreamon club. I saw the R.D.M. (the 1st witness for Pros.) He had a white jacket I don't remember anything else until two soldiers took me off the floor in the hallway. I then went in the office and was asked by the Pro. for my pay book. I was taken back to the billet.

I don't remember anything between going to the barracks at the last canteen and telling the Canadians in the Dreamon club. I had never been at the Dreamon club before. I had never seen her there before. I did not

1st witness for def cont

Knew he was an R Sgt. I don't remember him telling me - the Pro. had no statements. I don't remember a written order. I never saw it before to my knowledge.

Cross. Q am

I drank half bottle of wine and drank most of the Cognac. I remember I was drinking beer with the landowners. I don't remember what I was saying to them. My memory blanks out after seeing her head and veins getting off the floor.

Re-Q am

Rule of Procedure 83 B Complied with.

Defence has no further witnesses

No reply.

Prosecutor addresses the Court.

Defending Off addresses the Court.

The J.A.

Summing up of Prosecution

(1) On first charge we have the word of the R.S.M that he was hit & a denial was the result. A denial is not easily disregarded. For the Black girl said she did not hit him. Sec 56 A A (4a) may when charged with striking a superior officer be found guilty of using violence. That violence was offered is undeniable.

(2) On the 2nd charge the paper is evidence enough that an order was given. That he had no intention of carrying it out is proved by the fact that instead of leaving he attacked the R.S.M for behind according to two witnesses

(3) On the 4th charge we have only the R.S.M's word for it but no matter how coarse the expression may be any words to that effect are insubordinate no matter how mild.

(4) That the accused was not ~~incapable~~ incapable through drink is amply born out by the evidence. R.S.M Hong said he could walk normally.

(5) That the accused cannot remember what he did is no use to his discredit. Mr credit.

R. Saunders Lt

Defending Off.

The approach of P.S.M. Hang must be considered first. He was dressed in blue pants which to a soldier overseas for some time would appear to be civilian. He wore a white coat. The bandsmen wore white coats and black pants. P.S.M. Hang is a Chinese and as he is the only Chinese P.S.M. in my knowledge in the Can Army would not ordinarily be expected to be an P.S.M. The accused particularly as he has had a great deal to drink would not be expected to realize that P.S.M. Hang was in fact an P.S.M. The only word we have that he was told is that of P.S.M. Hang himself and his evidence does not appear consistent in all cases.

In his statement given to the Provost he said that the accused hit him and then he showed him his cards while in his evidence before the court he said that he showed the accused his cards and then the accused hit him.

P.S.M. Hang claimed that the accused hit him in the forehead with a fist while the Dutch girl witness who was at the spot said that the accused did not hit Mr Hang.

In regard to fist charge the above boils down to the only evidence of Mr Hang being struck in the face is his own statement.

In regard to the second charge, one again R.S.M. Thomas is the only evidence of giving an order. The Dutch witnesses do not understand English and the first witness did not see a written order.

In any charge of this kind the intention must be taken into account and there was not apparent time to be sure he did not intend to carry out an order if he did receive it. In fact he apparently started to carry it out by following R.S.M. Thomas.

In regard to the third charge, one again the only witness was R.S.M. Thomas. 'Fuck off' has reached a degree of usage in the Canadian Army where it is really only improper and in itself not insubordinate so it only means 'Go away' or words to that effect

Capt. R.C.D.

H.V. Davis,

J.D.

(1) Premalini's responsibilities of J.D. explained and referred to P. 103.

(2) Charge 3 1. 2, 4 explained.

(3.) Presumption as a defence explained reads. Mn mL ch III P. 25. Para 48 and Mn mL. Ch VII P. 106. Para 9. Also Mn mL P 25. Para 47.

4 Reasonable doubt explained. Mn mL Ch V P. 58.

(5) Court to Consider whether the words alleged in Charge 4 is improper as contended insubordinate. If improper and not insubordinate Charge should be dismissed. Fn. 5 in this regard read & explained.

(6) Superior officer explained f.n. 3. Mn mL 433 read.

(7) Rule Procedure 56 explained as special finding.

(8) Fn. 1 Mn mL P. 434 read & explained.

(9) Credibility of witnesses for the Court.

10 No further remarks required by the Court after Pros Sp.

Instructions
J.D.

19/Apr 45

Statement in Mitigation

Q. 3. The crime sheet is considerable I admit and at first years you will see he has not been a good soldier but on the other hand he has not been a bad soldier. The crimes are small & minor ones. There are no long Awl or serious offences. He has been in the army 3 yrs 11 months. He is young is no more and was when he joined the army he is of Indian blood and restricted life does not as a rule fit them. Drink does not agree with them either. I ask the Court to take these all into Consideration. In the 5th charge there was no damage to the vehicle and it was recovered.

Exhibit "X" 9/10

Summary of evidence in the case of H.66972, Gnr. Favel, T. G., 38 Bty., 3 Cdn L. A. A. Regt., R. C. A. charged with:

(a) Creating a disturbance. (A.A.Sec 40)
(b) Striking a superior officer. (A.A. Sec 8 (2)) 8 (2))
(c) Using insubordinate language to a superior officer.(AASec
(d) Improper possession of a W.D. vehicle. A.A.Sec 40)

By direction of the Commanding Officer, the evidence is taken on oath.

First Witness:

B.22124, R. S. M. Hang, H. L., No. 29 Recreation Coy., having been duly sworn states:-

"I am a Mil. Manager in charge of the Trianon Club, on the night of 10 Sep 45, at 2030 hours a bandsman came and called me from the Moonlight Garden Dance Hall. I was making my round at the time I went with the Bandsman. He told me the accused was pushing the bandsmen around and taking the bandsmen's beer. I told him who I was, that I was in charge of the Club and showed him my rank. He answered me,"I don't give a God Damn who you are", and then told me to "Fuck off", when I told him to leave the club at once he still continued to make a disturbance. I called him to attention and asked him if he could read, he said yes, then I told him I would give him a written order for him to leave the club at once. This he read and then still told me to fuck off. He wouldn't leave and I was on my way to call the Provost. In front of the check room he attacked me from the back and he struck me across the forehead and caused a bruise on my temple. There was a L/Cpl. and a Pte. there and I gave them an order to put him under close arrest and bring him to my office. I then phoned for the Provost.

R S M Hang

signed R.S.M. Hang, H.L.

The written order referred to in the statement of above witness is attached as Exhibit "A".

Cross examined by the accused:

Q. Sir, were you wearing a battle dress at that time?

A. No.

Q. But you had your rank on your sleeve, did You?

A. Yes.

Q. Did I strike you before you showed me your rank?

A. No.

Q. You made out that first statement, didn't you?

A. Yes.

Q. Does the statement you made now correspond with the statement you made on the night of 10 Sep 45?

A. Yes, it does.

~~Second Witness~~

J. E. Talm, Hagdulaan 25, Bilthoven, having been sworn in according to Rules of Proceedure App. II (d) is used as interpreter for the second, third and fourth witnesses.

Second Witness:

J. v.d. Hoorn, Walnoopstraat 12, Utrecht. Having been duly sworn states:

I am the band leader here. I have seen that the accused took the beer from our table. He drank two glasses of it and then he gave the glasses back to us because we protested. The accused was drunk.

signed J. v.d.Hoorn

I declare the above statement to be a true translation from the orignal Dutch Language.

signed J. E. Talm

The accused declines to cross-examine.

Third Witness:

Elisabeth van ~~Hoorn~~ Rooy, Bilderdzhstraat 44, Utrecht. having been duly sworn states:

I am working the the check room at the Trianon Club, Utrecht, I stood in behind the counter and for a short time the accused was talking with me. He went away. Ten minutes afterwards Mr. Hang came to me. It was very quiet. I saw the soldier, coming up and he attacked Mr. Hang I was shocked because it was so quiet. Then I called for help. Some of the members of the band came up and some soldiers too. Mr. Hang lay down on the floor with the soldier. Then they pulled them apart and the soldier was taken away. I did not see anything else.

signed. Elisabeth van Hoorn. E. Rooy

Cross-examined by the accused:

Q. What clothes was Mr. Hang wearing that night?

A. A white uniform.

I declare the above statement to be a true translation from the original Dutch language.

signed J. E. Talm.

Fourth Witness:

J. Eksteen, Hermams, Elcouiustraat 59, Utrecht. having been duly sworn states:

I am a member of the band. We were in our refreshment room. The accused was there too. He would have our beer. He would take it away fro from us. We took it as a joke at first, but the pianist wouldn't give his beer. We told the pianist to give it, because we still thought it was a joke. We stood with our glasses in our hands. The accused took them away and put them down on the table. Then he gave us our glasses back except the trumpet player. The accused took that glass for himself. The trumpet player told him it is my beer and the trumpet player went back. Then Mr. Hang came down. He heard about it and he tried to make the accused behave. Then the accused and Mr. Hang talked for a moment together. The Mr. Hang told accused to come with him. Mr. Hang went out first, followed by the accused. Then we thought already that Mr. Hang and accused would fight. Then we followed Mr. Hang, when we turned the corner we saw Mr. Hang and accused fighting. That moment they were both lying on the floor. The accused held Mr. Hang. Then I came to them and took one hand of the accused off. The two other members of the band came up and helped me. Then some soldiers came up and took the accused with them.

signed J. Eksteen, Hermans.

Fourth witness continued:

The accused declines to cross examine the witness.

I declare the above statement to be a true translation from the original Dutch Language.

signed J. E. Talm.

Fifth witness:

K.62180, L/Cpl. Little, L..B., No. 2 Coy, Cdn Provost Corps, 2 Cdn Inf Div. having been duly sworn states:

I am Coy. Investigator for No. 2 Provost Coy. At approx. 2300 hours the fist September, 1945 I was told by the orderly Cpl. that a jeep had been stolen from the Officer's Car Park at the Officer's cap park, Amersfoort. At approx. 2310 hours the orderly Cpl. informed me that a car accident had taken place on the Appledoorn Road. The civilian would be standing on the road blinking a torch where the accident occured. At approx. 2330 hours I contacted the civilian who turned out to be a Dutch policeman. He took me to where the jeep was which from information which I had already received I identified as the jeep which was stolen from the car park and driven by Lieut. Grace. Documents and the 412 were in the compartment. The civilian police then took me to the place where he had found the jeep. I asked him for a statment and a map sketch of the place where he had found the jeep. I took the jeep back to Coy. H.Q.'s and put it in the Provost Car park for safe-keeping. The Orderly Cpl. informed me that L/Bpl. Kostinuk of No. 2 Coy Provost Corps had been detailed to go to Zwolle to find the whereabouts of a soldier he knew as Gnr. Favel. At approx 1000 hours the 2 September 1945 accompanied by L/Cpl. Kostinuk who informed me that Gnr. Favel was at Festival Grounds, 2 Cdn Inf Div on a working party. Arriving at the Festival gounds I contacted the officer i/c of the Anti Tank working party. With his consent Gnr. Favel was called in and turned over to me for questioning. I asked L/Cpl. Kostinuk if this was the Gnr. he had saw driving the jeep the night before. He replied, "Yes" I then asked Gnr. Favel if he had been driving a jeep the night before, He replied, "No". After further questioning as to his whereabouts the previous evening I placed him under close arrest for taking a jeep out of the officer's car park without proper authority. I informed the officer i/c of the working party as to what Gnr. Favel was being charged with, and proceeded to Provost Coy. H.Q. with Gnr. Favel. We arrived at Coy H.Q's at approx 1115 hours the second September 1945 showing Gnr. Favel the jeep which had been taken from the car park. He said, "O.K. Cpl. I took it" (or words to that effect). I asked him if he cared to give a statement. He replied, "Yes". I then proceeded to Essex Scottish Regt. Guard Room and after duly cautioning Gnr. Favel he gave me a statement. I then turned him over to the Sgt. in charge of guard at Essex Scottish Regt. for safe keeping, told Gnr. Favel that charges would be forwarded to his Coy, H.Q's.

signed L. B. Little.

Accused declines to cross-examine.

The statement of the accused mentioned above in the evidence of the above witness is attached as Exhibit "B".

Sixth Witness:

K.22038, L/Cpl. Kostinuk, J. No. 2 Provost Coy, Cdn Provost Corps, CFN. having been duly sworn states:

On September, First, 1945 at 2200 hours I was on duty at the Tower Bridge, Amersfoort, accompanied by L/Cpl. Breneski. At approx 2210 hours a jeep drove up which we halted and checked the driver for a work ticket. I recognized Gnr. Favel and when asked for his work ticket he drove off. I shouted at him to halt, but due to the noise I presume that he did not hear me, and reporting to me Orderly room I was informed that a jeep bearing tact. No. 40 from 4 Div was stolen. I reported seeing Gnr. Favel in a 40 jeep and was told to go to his unit and see Gnr. Favel. On going to his Regt. and Bty I was informed that he was working on a fatigue party at the Air Port for 2 Cdn Div Festival. On Sept 2 at approx 1100 hours L/Cpl. Little and I went to the Airport to find Gnr. Favel. I recognized Gnr. Favel in a fatigue party and the officer i/c had Gnr. Favel brought to us. L/Cpl. Little took on the investigation in regards to the stolen jeep. Gnr. Favel then volunteered to make a statement of his own free will. I have known Gnr. Favel for some time as we were in the same Bty together in 1942.

Signed J. Kostinuk.

The accused declines to cross-examine.

The accused was cautioned as follows:

Q. Do you wish to make any statement or to give evidence on oath? You are not obliged to say anything or give evidence unless you wish to do so, but whatever you say or any evidence you give will be taken down in writing and may be given in evidence.

A. I do not wish to make a statement.

The accused does not call any witnesses.

I certify that the foregoing Summary of Evidence, consisting of four pages, was taken down by me in the presence of the accused and that RP 4 (c), (d), (e), (f) and (g) have been complied with.

(A. Saunders) Lieut. RCA
30/3 Cdn L. A. A. Regt., RCA

In the Field
13 Sept 45.

I wish a Defending Officer.

I desire the services of any Officer of 3 Cdn L.A.A.Regiment that the Commanding Officer may appoint.

In the Field
15 Sep 1945

T.G. Favel
.....
(H66972 Gnr FAVEL,T.G.)

THE FOLLOWING OFFICERS HAVE BEEN DETAILED TO PERFORM THE DUTIES INDICATED AFTER THEIR NAMES:

Lieut A.SAUNDERS -- Prosecuting Officer

Capt H.K.CLARKE -- Defending Officer

In the Field
15 Sep 45

(G.G.K.BLAKE) Lt-Colonel
Commanding Officer
3 Cdn L.A.A.Regiment

Statement of H66972 Gnr. Favel. T.G. 2nd Sept. 45
of 18th Bty. 2 A/T Reg't. R.C.A. 2nd Cdn. Inf. Div.

I, Gnr. Favel. T.G. after being duly cautioned by Lt/col Little of No. 2. Coy. Cdn Provost Corps. Make the following statement of my own free will, Re, my taking a Cdn Jeep. C.M. 55 38437, Dec 40, from the Car Park of the Officers, Club., to show that I understand fully the caution by Lt/col Little. I sign my name here — T. Favel

I, Gnr, Favel. T. G. H66972 of 18th Bty 2 A/T Reg't R.C.A. 2nd. Cdn. Inf. Div. state that I am billeted at the Essex Scottish Reg't. Barracks, while working at the Festival Grounds, for 2nd Div Exhibition. to take place on the 3 - Sept-45.

at approx. 18.00 hrs 1. Sept-45. I went to the Essex Scottish Canteen where I drank beer until 20.00 hrs, I then left with a friend to meet two girls on the other side of Amersfoort, the girls did not show up. So we returned to Barracks, my friend stopped in, But I got some cigarettes and went up town again.

At. approx. 21.00 hrs 1 Sept 45, I got a bottle of Cognac from a Dutch civilian, which I drank I faintly remember finding a Jeep, not demobolized, and of going for a ride in it. The next thing I remember is hitting a hole or something, the jeep stalled, and I could get it to go and more.

I came back to the Essex Scottish Barracks

(P.T.O.)

and remember, nothing more until this morning, when the fellows in the room I was sleeping in, told me that I had passed out the nite before and had been brought to bed by two Cdn Soldiers, belonging to the Essex Scottish Regt. I do not know who these soldiers are.

As I had to go on a working Party on the morning of the 2nd Sept. 45. I had no chance to return the jeep, before I was contacted by L/cpl Little of Provost Corps.

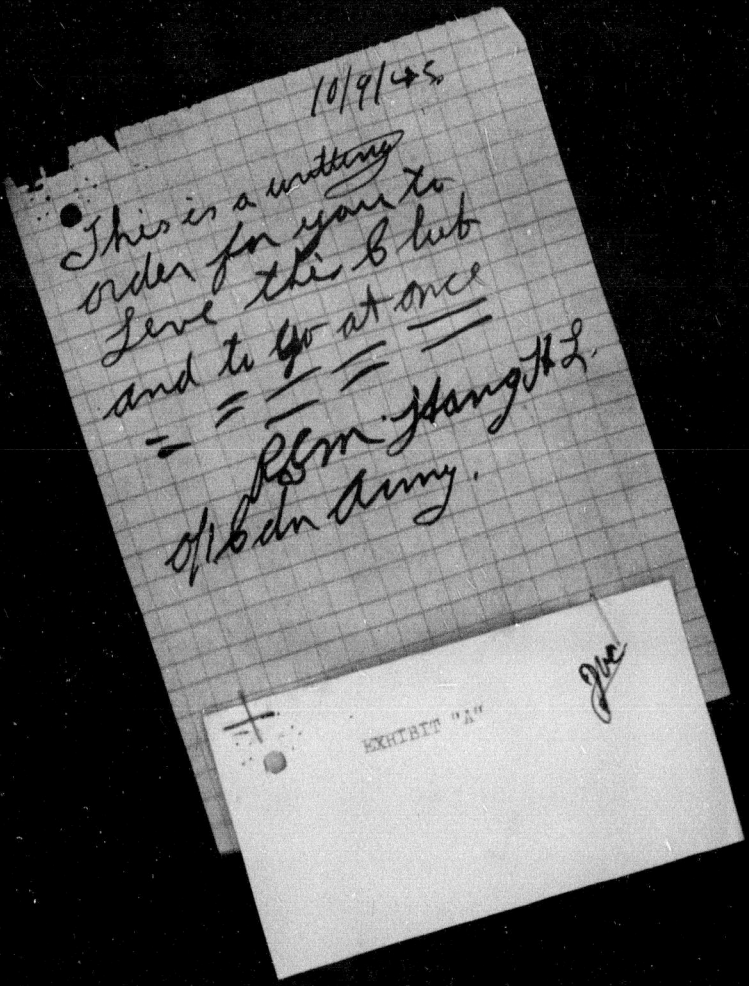
I fully intended to find the Jeep when I returned from work and turn it over to the Provost Corps as I did not know who it belonged to or where I had picked it up.

I have read the above statement and it is the truth

signed by me this second day Sept. 1945

H16972 T.J. Travel Pte
18th Bty 2nd A/Tk Regt R.C.A.
2nd Cdn Inf. Division

EXHIBIT "B"


10/9/45.

This is a military order for you to leave this base and to go at once to Ft Belvoir Va. Sgt. Hanger L. of the Army.

EXHIBIT "A"

Plaintiff

Exhibit "B"

Statement of Evidence in the case of
H66972 Gnr FAVEL, T.G.
3 Cdn LAA Regt RCA RHQ

Sir,

At approx 2030 hrs 10 Sep 45, I was making my rounds through the WINTER GARDENS, UTRECHT, when a member of the band came and told me about a soldier, who had been pushing him around and was drinking the beer that belonged to the bandsmen. I told the soldier to behave himself, he then struck me and told me to "fuck off". I called him to attention and showed him my rank which was on my sleeve. I then gave him a written order to leave the dance, he read this order and said he didn't give a fuck who I was and attempted to strike me again.

This man was placed under close arrest, by myself and taken to my office, where I notified No 4 Cdn Provost Coy.

Signed: R22124 RSM KANG, H.L.
29 Rec Inc. 1 Cdn Army

Certified true copy of the original statement which I have in my custody.

(WA MILLET) CAPT
Officer Commanding
No 4 Cdn Pro Coy CDA

EXHIBIT "C"

M.F.B. 355
40/P & S/675

STATEMENT AS TO CHARACTER AND PARTICULARS OF SERVICE OF ACCUSED

Number	Rank	Name	Regiment (or unit)
H66972	Gnr	Thomas Gerald FAVEL	3 Cdn L.A.A.Regiment

1. The following is a fair and true summary of the entries in the ~~Service and General~~ Field ~~Regimental and Squadron, Battery~~ Conduct sheets ~~or Company Conduct sheets~~ of the accused, exclusive of convictions by a Court-Martial or a Civil Court, of summary awards under Section 47 of the ~~Army~~ Air Force Act and of cases in which trial has been dispensed with.

	Within last 12 months		Since enlistment	
For	AWL (A.A. Sec 15(1), 3	times	A.A. 40	6 times
For		times	A.A. 15 (1)	8 times
For		times	A.A. 19	3 times
For		times	A.A. 11	2 times

~~Number of instances of gallantry or distinguished conduct~~ -

~~-or-~~

~~There are no entries in the conduct sheets of the accused.~~

NOTE:—If the charge is for drunkenness, the entries for drunkenness must be stated separately.

2. The accused has not been previously convicted

~~-or-~~

~~Previous convictions of the accused by a court-martial or a civil court, of summary awards under Section 47 of the Army Act and dispensations with trial under A.A. 78 are set out in the Schedule annexed to this statement.~~ ~~Air Force Act~~ ~~A.F.A. 78~~

3. The accused is not under sentence at the present time.

~~-or-~~

~~The accused at the present time is under sentence for ..... beginning on the ..... day of .....~~

4. The accused has been in confinement awaiting trial on the present charges, for NIL days in civil custody, and 10 days in military custody, making a total of 10 days in custody, of which NIL days were spent in hospital.

5. The present age of the accused according to his record of service is ~~attestation paper is~~ 22 years 6 mos.

6. The date of his commission specified in his record of service is ~~attestation~~ ~~attestation paper~~ 28 October 1941.

7. The service which the accused is allowed to reckon towards discharge is 3 yrs 10 mos.

8. The accused is entitled to reckon 3 yrs and 10 mos service for the purpose of determining his pension, etc.

9. The accused is in possession of or entitled to ~~no air force~~ military decoration, ~~or air force reward (or is in possession of or entitled to)~~. State any ~~air force~~ military decoration or reward.

CVSM & Clasp
Defence Medal
1939-45 Star
France-Germany Star

~~10. (If the accused is a warrant officer.) The accused before he was made a warrant officer had held the regimental rank of .....~~

11. (In the case of an officer.) The accused holds in the Royal Canadian Air Force the rank of Permanent Force unit dated, and in his regiment (or corps), the rank of dated.

12. The accused has served as a non-commissioned officer continuously, without reduction, to the present date:—

Date of promotion.

In the rank of years.

In the rank of years.

In the rank of years.

NOTE:—If any matter in any of the above paragraphs cannot be stated from the Regimental books, the paragraph must be struck through.

SCHEDULE

Of convictions by a court-martial or civil court, of summary awards under Section 47 of the Air Force Army Act, and of cases in which trial has been dispensed with of accused, Number Rank

Name of Regiment

NOTE:—A verbatim extract from the regimental books stating these convictions and dispensations with trial must be inserted.

Description of Court by which tried	Date and Place of Trial	Charge upon which convicted	Sentence of the Court	Punishment Remitted

I hereby certify that the foregoing schedule of convictions and dispensations with trial is a true extract from the regimental books in my custody.

Signed this 15th day of Sept 1944

(A.PERLEY-ROBERTSON) Capt RCA
Adjt 3 Cdn L.A.A.Regiment

The above statement (with the schedule of convictions and of cases in which trial has been dispensed with) is read, marked signed by the president, and annexed to the proceedings.

No H.66972 Name Favel, T. G. | Sqn., Battery, or Company | Corps R.C.A.S. | Date of enlistment 28 Oct 42 | G.C. Badges | Service or Proficiency Pay | M.F.M. 6 (A.F.B. 122) 40/P & S/136 (2637)

Date of last entry in Company Conduct Sheet | No. and date of last drunk | Period not reckoning towards freedom from extra fine | Sheet No. 1 | Signature O.C. Company, etc. | Character

Place	Date of offence	Rank	Cases of drunkenness	OFFENCE	Names of Witnesses	Punishment awarded	Date of award or of order dispensing with trial	By whom awarded	Remarks
Previous sheet destroyed 28 April on completion of 6 months service. Date of last entry 7 April 42. Cases of drunkenness (1) Last instance 1 Dec 41.									
Field	16 Jun 42	Gnr.		A.A. 40 WOAS an act to the prejudice etc. Late for guard mounting.	Sgt. Burry Sgt. Payen	5 days CB	17 Jun 42	HS Williams Major	
Field	27 Jun 42	Gnr.		AWL from 0900 hrs 27 Jun 42 to 1200 hours 27 Jun Absent 3 hours AASec 15	Bdr. Faulzer			WF Blair Major	
Field	13 Aug 42	Gnr.		AA Sec 40 did not stop talking when ordered	Lt. Turbon Gnr. Campbell Gnr. Arsenault	4 days CB	16 Aug	WF Blair Major	
Field	28 Aug	Gnr.		WOAS AWL from 2200 hours 28 Aug until 0600 hours 29 Aug 42 Absent 8 hrs	Bdr. Winter	7 days CB 7 days Pay	1 Sep	Lt.Col. G.G. Leeston	
Ixidx 5 Sep 42 Gnr Superior Camp				WOAS an act to the prejudice of good order etc. Did ~~xxx~~ appear on parade with dirty boots at 1500 hrs 4 Sep 42	Bdr. Noonan	5 dys CB	5 Sep	Major CK Suddard	

(P.T.O.)

Place	Date of offence	Rank	Cases of drunkenness	OFFENCE	Names of Witnesses	Punishment awarded	Date of award or of order dispensing with trial	By whom awarded	Remarks
Field	11 Sep	Gnr.		WOAS an act to the prej. of good order and Mil. Disc. in that he at Superior camp did a appear on defaulters parade with dirty boots and improperly dressed AA Sec 40	S/Sgt. Nichol	7 Days CB	12 Sep	Major GK Bullard	
Field	15 Mar	Gnr.		Sec 40 WOAS Cond. to the prej. etc.	Bdr. Cox.	3 days CB	16 Mar	Capt. EH Pegg.	
Field	25 May	Gnr.	2	Left the Guard room and did not rtn.					
Field	12 Jun 43	Gnr.		Sec. 19 AA Drunkenness	Documentary	Fined $5.00	2 Jun 43	Lt-Col AE Murray	
				Sec 11 WOAS neglecting to obey Camp standing orders, did not get up at reveille	Sgt. Farmer S/Sgt Heath " Spunnett	7 days CB	12 Jun	Major RS Peabody	
Field	14 Jun	Gnr.		Sec 11 WOAS neg. to obey camp standing orders. did not get up at reveille	Sgt. Farmer Sgt. Adams	7 days CB	14 Jun	Major RS Peabody	
Field	25 Jul	Gnr.		Sec 15 (1) WOAS absenting himself without leave from 1700 hours 23 July to 2115 hrs 26 July. 1dy 9 hrs 15 mins.	Documentary Lt. [illegible] Sharp	21 days F.P.	31 Jul 43	AL Warr Major	

M.F.M. 6
(A.F.B. 122)
40/P & S/136 (2037)

No. H.66972 Name Favel, T. G. | Sqn., Battery, or Company | Corps R.C.A. | Date of enlistment 28 Oct 41 | G.C. Badges | Service or Proficiency Pay

Date of last entry in Company Conduct Sheet | No. and date of last drunk | Period not reckoning towards freedom from extra fine | Sheet No. 2 | Signature O.C. Company, etc. | Character

Place	Date of offence	Rank	Cases of drunkenness	OFFENCE	Names of Witnesses	Punishment awarded	Date of award or of order dispensing with trial	By whom awarded	Remarks
Field	28 Jul	Gnr.		Sec 40 NDAS neglect to the prej. etc. Neglected to have his pass stamped at destination	Documetary	Admonished Stoppage of pay £1-14-4	31 Jul 43	AL Warr Major	
Field	5 Dec	43 Gnr.		NDAS AWL from 2359 hrs 5 Dec to 0815 hrs 6 Dec AA Sec 15 (1)	Bdr. Clarkson	7 dys CB	8 Dec 43	CH Fenelon Lt. Col.	
Field	29 Apr	44 Gnr.	3	DRUNKENESS at about 2235 hrs 29 Apr On High St. Scunthorpe was drunk when apprehended by Civ. Police	Documentary Lt. D. Heaps For. Cr 12	Fined £10.00	2 May 44	Young. Lt.Col. AA	
Field	21 Aug	44 Gnr.		Sec 15 (1) AA NDAS Absenting himself without leave from 1300 hrs 21 Aug 44 until 2000 hrs 22 Aug 44 (Time absent 1 day 2 hrs)	Sgt Kenler A L	days pay	24 Aug44	F.C. Birmingh Gn Major.	

(P.T.O.)

Place	Date of offence	Rank	Cases of drunkenness	OFFENCE	Names of Witnesses	Punishment awarded	Date of award or of order dispensing with trial	By whom awarded	Remarks
Field	12 Jan 45	Gnr		AA Sec 15 WOAS AWL from 1200 hrs 12 Jan 45 to 0940 hrs 16 Jan 45 Absent 3 dys 21 hrs 40 mins.	Documentary	7 days pay 4 dys Auto	18 Jan 45	W.C. Myatt	Total Forf. 11 days pay.
Field	10 Feb	Gnr.		AA Sec 15 (1) WOAS AWL from 0845 hrs 10 Feb to 1150 hrs 10 Feb. 3 hrs 5 mins.	ALS Rumbellow	7 dys CB	10 Feb	WS Page, Major	
Field	2 Aug	Gnr.		SEC 15 WOAS AWL from 0900 hrs 2 Aug to 2100 hours 7 Aug Absent 5 dys 12 hrs	Sgt. Davies Bdr. Beaton	28 dys F.P. and forfeits 28 dys pay	8 Aug 45	J.W. Southam	

CERTIFIED TRUE COPY:

(A. Saunders) Lieut.

H.Q.C. 55-F-863

CONFIDENTIAL

DEPARTMENT OF NATIONAL DEFENCE OTTAWA, CANADA

SUBJECT

FIELD GENERA L COURT-MARTIAL

FAUVELLE, VICTOR C-37392 PT

CENTRAL REGISTRY	DATE	R.A. OR C.J.	INITIALS	REFERRED TO	FOR	INITIALS	DATE
				(If purpose for which referred subject be explained—use initials and enter here "(See Above)")			2-12-46

CONFIDENTIAL
H.Q.C. 55-F-863

OVERSEAS COMBINED

NOTICE

1. Files should be retained no longer than absolutely necessary. If a file is frequently needed at short intervals, it is better to keep it in the office than keep it out of Central Registry indefinitely. This ensures it being registered and kept in order, and also from being misplaced.
2. Files should be returned by registered messenger. A file in current use should be returned promptly when the object has been attained.

PASS THIS FILE TO ANOTHER

RECORDED AT CMHQ IN AB 160

4N-116

FIELD GENERAL COURT-MARTIAL

Convened by Order of Lt-Col G.S. Ross-Smith Comd RCASC 2 Cdn AT Gp dated 29 Nov 44

ACCUSED.

(As to the trial of two or more charged jointly see RP 16, 71, 109. As to reasons for showing (a) permanent or confirmed rank, and (b) apprmt. A/rank or A/apprmt, if any, see AA 182, 183, fns, KR Con 308, 328, 330.)

Number.	(a) Prmnt R. (b) Apprmt, A/R or A/Apprmt.	Full Christian Names.	Surname	Unit
C-37392	Pte	Victor	Fauvelle	33 Cdn C T pn Coy RCASC

PROCEEDINGS REVIEWED

REVIEWING OFFICER, JAG BRANCH C.M.H.Q.

PROCEEDINGS OF TRIAL.

Held in the Fd in (*country*) Holland on (*date(s)*) 2 Dec 44

RECORD FORM A—OPENING PROCEEDINGS AND ARRAIGNMENT.

A1. The President, Members, ~~waiting Member~~, JA, ~~if any, and Offrs under Instr, if any~~ assemble, and the Court is closed.

(PRINTED MATTER, NOT IN ITALICS FOR GUIDANCE, WILL BE DELETED, IF NOT USED OR APPLICABLE, AND INITIALLED BY PRES OR JA. The Schedule referred to throughout is on p 4. Citations do NOT include all relevant fmn ROs. For guidance on procedure when a variation in this form arises, see form for GCM in MML pp 741 to 759. A brief record of such variation will be made and given a number having reference to appropriate or preceding para number herein. See back of Convening Order, CF A95, for oaths and instrs on how to record addresses, evidence, etc, which instrs are hereafter called "Notes". As to general provisions for conducting the trial see AA 53, RP 56, 63-70, 73, 74, 94, 103, 119, 132.)

A2. The President initials and lays before the Court the Convening Order and Charge Sheet, ~~if~~ attached thereto.(1) The Court is satisfied that it is properly convened and constituted(2), accused is ~~not~~ amenable to military law, and each charge discloses an offence.(3)

(1. As to use of Summary of Evidence see RP 17 fn 6. 2. AA 49, 50, RP 105-107. 3. RP 11-13, 23, 24.)

A3. The Court is opened. The accused is ~~not~~ brought before the Court. At 1100 hours trial commences.

A4. The Prosecutor produces a Medical Certificate that accused is ~~not~~ fit to undergo trial by court-martial.(1) ~~The Prosecutor informs the Court that accused elected to be tried by court-martial instead of being dealt with summarily by the CO.(2)~~

(1. KR Con 557. 2. AA 46(B), RP 60 fn 1. For effect see KR Con 563(c). Delete, if not applicable.)

A5. ~~President to accused: Do you object to ..... as interpreter? Ans .....~~

~~The Interpreter is sworn.(1) Do you object to ..... as shorthand writer? Ans .....~~

~~The shorthand writer is sworn.(1)~~

(1. RP 72. Delete, if none employed.)

A6. The Convening Order and names of the President and Members of the Court are read to the accused.(1)

President to accused: Do you object to be tried by me as President or by any of the Members of the Court?

Ans No SIR (2)

(1. RP 110. 2. If no objection, waiting member retires. RP 68(B). If objection, see procedure AA 51, RP 25, 71, 18, MML p 742.)

A7. The President, Members, JA, ~~if any, and Offrs under Instr, if any~~ are sworn.(1) The following are the ranks, names and units of the offrs comprising the Court, etc:

President	Major	W.R. Shaw	2 Cdn MAC RCASC
Member	Capt	R. Church	2 Cdn C T pn Coy RCASC
Member	Lt.	D.W. Slater	34 Cdn C T pn Coy RCASC
Judge-Advocate	Capt.	G.H. Jarmyn	HQ. 2 Cdn Corps
Prosecutor	Capt.	R.S. Wisking	33 Cdn C T pn Coy RCASC
Defending Offr	Lt.	B. McKenty	33 Cdn C T pn Coy RCASC

Questions by President: Is the Prosecutor a lawyer? Ans. NO Is the Defending Offr a lawyer? Ans. NO (2)

(1. RP 26, 27, 109, 111. List of offrs under instr will be returned separately with proceedings for information of Conv Offr.)
(2. If Pros a lawyer and Def Offr not, accused is entitled to an adjournment when RP 89 (B) and fn 2 were not followed. See Dl p 3.)

A8. The accused ..... before arraignment make(s) (no) ~~not~~ plea (1)

(1. If a special plea is made for separate trial on one or more charges (RP 62(E), 108), or as to the jurisdiction of the Court (RP 34, 35(A), 113), or in bar of trial (RP 36), or as to accused's mental fitness to stand trial (AA 130, RP 57), or by one of several accused charged jointly to be tried separately (RP 16, 71), such plea, the addresses made in support or against, the evidence, if any, and finding are recorded per Notes. For forms of record see references in fns to RsP cited. Insert in AB rank and name of the accused making the plea.)

A9. The accused is ~~not~~ arraigned ~~separately~~ on all charges in the charge sheet.(1) The accused does ~~not~~ not object to any charge.(2) There is no amendment to be made to the Charge Sheet.(3) The President records the pleas in Part I of the Schedule.

(1. RP 31, 112. See para 1 of Instrs p 2. When more than one Charge Sheet see RP 62; when several accused to be tried separately see RP 71(C), and use separate copies of CF A96 to record proceedings. 2. RP 32, RP 33. If otherwise, delete and make appropriate record per Notes.)

A10. The Court ~~(explained)~~ considers the Instrs on Procedure after Arraignment at top of p 2. The proceedings are continued on Record Form B + E

PRESIDENT OR JA WILL INITIAL ALL DELETIONS AND ALTERATIONS.

4

SCHEDULE.

PART I. PLEA(S), FINDING(S) AND SENTENCE.

Accused: C-37392 Pte Fauvelle V 33 Cdn C Tpn Coy RCASC

Charge. (Insert "alternative" where applicable.)	Plea. (See Instrs p 2.)	Finding. (See note below.)	(Space for use as required for further charges, accused charged jointly, special findings, etc.)
1st	GUILTY	GUILTY	
2nd	GUILTY	GUILTY	
3rd	GUILTY	GUILTY	
4th			
5th			
6th			

(Note: As to findings for lesser offences see AA 56, RP 44; findings on alternative charges see MML p 483 fn 4 para 2, RP 44; special findings see RP 44 and MML p 753, and in loss of kit see RP 44 fn 6.)

~~At present under sentence for ..... beginning on (date) .....~~ (1)

(1. Insert sentence being served, or delete, if not applicable. See RP 46(A). Information should be found on MF B355 or AF B296.)

Time in confinement awaiting present trial—a total of 12 days, of which 0 days were spent in hospital.(1)

(1. See RP 46(A) fn 2. Information should be found on MF B355 or AF B296 admitted in evidence under E2.)

Sentence Awarded by the Court:

To undergo detention for six months.

(Sgd) Gordon H. Jarmyn Judge-Advocate, if any. Capt. 2 Dec 44 Date awarded. (Sgd) W.R. Shaw President. (RP 45, 50.) Major

(See back of Convening Order as to assembly and disposal of record after trial.)

PART II. MINUTE WHERE CONFIRMATION RESERVED. (AA 54(5), RP 120(F), MML p 760.)

Date ..... (Sgd) ..... Commanding .....

PART III. DECISION OF CONFIRMING OFFR ON FINDING(S) AND SENTENCE.

(For duties and powers see AA 54, 57, RP 37(D) fn 6, 46(A), 51-56, 120, MML pp 759-761, KR Con 567-577. Acquittals require no confirmation and cannot be revised: AA 54(3). Sending back finding or sentence for revision by Court: AA 54(2), RP 120(G). If not confirmed, accused may be tried again: AA 157, MML p 64. Minute of confirmation or non-confirmation may be altered before promulgation: RP 53, MML p 65. Quashing after promulgation: KR Con 573. Duties and powers of reviewing offrs: AA 57, 57A, RP 53A, 54. The Confirming Offr must sign here personally. AA 172 fn 1.)

My decision on the finding(s) and sentence set forth in Part I is:

Confirmed

~~I direct that the accused be not committed to prison or detention barracks until further order.(1)~~ DSM

(1. AA 57A. Delete if not used.)

(Sgd) D.S. Ross-Smith Lt-Col.

Date 2 Dec 44. Commanding 6 RASC 2 Cdn Corps Tps. Confirming Officer.

PART IV. PROMULGATED AND EXTRACTS TAKEN. (RP 52, KR Con 576, 577.)

Accused.	Date.	Signature of Offr.
C 37392 Pte FAUVELLE, V	4 Dec 44	R.S. Wisking Capt Adjutant 33 Cdn Corps Troops Coy R.C.A.S.C.

ALL DELETIONS AND ALTERATIONS WILL BE INITIALLED

INSTRUCTIONS ON PROCEDURE AFTER ARRAIGNMENT.

1. *The accused may not plead or be found Guilty on more than one of two or more charges laid in the alternative.* (*RP* 37(*A*).) *As to withdrawal of alternative charges by Prosecutor see RP* 35(*C*). *No other charge can be withdrawn for any reason without authy from Convening Offr. If Convening Offr concurs, Court may accept plea of Guilty to lesser, etc, offence.* (*RP* 44(*H*).) *Accused may change a plea of Not Guilty to Guilty during trial.* (*RP* 38.) *As to refusing to plead or not pleading intelligibly see RP* 35(*A*). *As to plea when sentence may be death see RP* 35(*D*).

2. *The proceedings on each charge sheet* (*RP* 62) *after arraignment will be conducted as follows in the respective circumstances stated:*

I. If pleas to all charges are GUILTY, use Record Form B below.

II. If pleas to all charges are NOT GUILTY, use Record Form D on p [redacted] 3.

III. If pleas to some charges are GUILTY and to other charges are NOT GUILTY and,

(a) Such mixed pleas occur when there are no alternative charges in the Charge Sheet, use Record Form C below. (*RP* 37(*A*).)

(b) Such mixed pleas occur in a set of two or more charges laid in the alternative, see RP 37 (*A*) *and fn* 2 *as to discretion of Court,* (i) *to try the accused on all such alternative charges as if he had pleaded Not Guilty thereto, or,* (ii) *to record the pleas as the findings of Court. After deciding between* (i) *and* (ii), *Court will proceed under foregoing instrs as may be appropriate to result of its decision. See M M L p* 744 *Instrs* (2).

3. *As to responsibility of President to accused see RP* 59, 60(*C*); *powers and duties of JA see RP* 103; *duty of Prosecutor see RP* 60(*A*) (*B*); *duty and privileges of accused and Defending Offr see RP* 60(*C*), 87(*C*), 91, 92; *swearing and withdrawal of witnesses from Court see RP* 81, 82; *questioning of accused see RP* 80, 87(*C*), 92(*B*), *and of witnesses see RP* 83-85; *calling or re-calling of witnesses by Court etc see RP* 75-79, 86, 116; *use of Summary of Evidence at Trial see RP* 17(*E*) *fn* 6; *and responsibility of JA or Pres to record proceedings see RP* 94, 96.

RECORD FORM B—PROCEEDINGS ON PLEAS OF GUILTY TO ALL CHARGES.

B1. The ~~President~~ JA, ~~if not~~, complies with RP 35(B) by explaining to the accused the nature and meaning of the charge(s)(1), and that on his plea of Guilty there will be no regular trial but merely a consideration of the sentence to be awarded after he has been given an opportunity to make a statement in reference to the charge(s), call witnesses as to character and make an address in mitigation of punishment.(2)
(1. *RP* 35 *fn* 3. 2. *MML p* 54 *para* 47.)

B2. President to accused: The Court will now receive any statement you desire to make in reference to the charge(s).(1) If it appears from your statement that there are circumstances which indicate that you do not understand the effect of the plea of Guilty(2), or which show provocation or extenuation in respect of which in your interest the witnesses for the Prosecution should be examined(3), we shall advise you to change your plea to Not Guilty. In making a statement you will not be sworn or subject to cross-examination; and anything you say will not be used in evidence against you after you change your plea. If, however, it appears to the Court that your statement affects only the amount of punishment to which you are liable, you will not be advised to change your plea and you will be given an opportunity later to prove your statement by sworn testimony, if you so desire.(4)

President to accused: Do you wish to make a statement? Ans No SIR .....(5)
(1. *RP* 37(*B*). 2. *RP* 37(*D*) *fn* 6. 3. *RP* 35(*B*) *fn* 5 *para* 3, *MML p* 54 *para* 47. 4. *See para E3 of Record Form E.* 5. *Statement, if any, recorded per Notes.*)

B3. The Court considers the accused's statement.(1) ~~The Court decides (not) to advise accused to change his (their) plea(s) of Guilty to Not Guilty on ..... charge(s). The accused is (are) so informed, and he (they) change(s) his (their) plea(s) on ..... charge(s). Part I of the Schedule is amended accordingly.~~ } Ex
(1. *Court may be closed to consider the statement. Delete whole or part not used.*)

B4. On the charge(s) to which the plea(s) of Guilty ~~is~~ (are) not changed the President records finding(s) of Guilty in Part I of the Schedule.(1)
(1. *RP* 35(*B*). *If any plea(s) is (are) changed, use Record Form C or D as appropriate.*)

B5. The Summary of Evidence is marked Ex A, initialled and read aloud by the President.(1)
(1. *If there is no Summary, or if it is inadequate, comply with RP* 37(*B*). *If there is any evidence inconsistent with any plea standing as Guilty, Court will advise accused to change such plea and, if changed to Not Guilty, try such charge(s) by use of paras D1 to D8 inclusive of Record Form D on p* 3. *RP* 37(*D*).)

B6. The accused having been found Guilty on one or more of the charges, the proceedings are concluded by using Record Form E on p 3.

RECORD FORM C—PROCEEDINGS ON MIXED PLEAS OF GUILTY AND NOT GUILTY.

C1. As to the charges on which accused pleaded NOT GUILTY the trial is continued by using paras D1 to D8 inclusive of Record Form D on p 3 before proceeding with C 2.(1)
(1. *RP* 37(*A*) (*E*).)

C2. The charges on which accused pleaded GUILTY are read to him (them) again, and the trial is continued by using paras B1 to B5 of Record Form B above.(1)
(1. *Under B5 such parts only of the Summary of Evidence are read as relate to the charges dealt with under C2. If any plea is changed to Not Guilty, trial thereon proceeds by complying with paras D1 to D8 inclusive in Record Form D on p 3 and making an appropriate record thereof on a separate sheet.*)

C3. The accused having been found Guilty on one or more of the charges, the proceedings are concluded by using Record Form E on p 3.

PRESIDENT OR JA WILL INITIAL ALL DELETIONS AND ALTERATIONS.

Pin here Loose Sheets of Record.

RECORD FORM D—PROCEEDINGS ON PLEAS OF NOT GUILTY TO ALL CHARGES.

D1. President to accused: Do you wish to apply for an adjournment on the ground that any of the rules relating to procedure before trial have not been complied with, and that you have been prejudiced thereby, or on the ground that you have not had sufficient opportunity to prepare your defence? Ans .....(1)
(1. *If "yes", see RP* 39(*A*) *for procedure. Statement or evidence, if any, is recorded per Notes.*)

D2. The Prosecutor makes (an) (no) opening address.(1)
(1. *RP* 39(*B*), 60(*A*) (*B*), 90, 92(*C*) (*D*). *Record address per Notes, subject to RP* 95(*C*).)

D3. The evidence for the Prosecution is taken.(1)
(1. *RP* 39(*C*), *114, KR Can* 555. *Record evidence per Notes. As to Prosecutor giving evidence himself see RP* 39(*D*) (*E*).)

D4. The Prosecution is closed.(1) The Defending Offr submits that the evidence for the Prosecution does not establish a prima facie case against the accused on the .....charge(s).(2) The Court is closed, and considers the submission.(3) The Court is re-opened, and the President announces that the submission is disallowed on the .....charge(s), and allowed on the ..... charge(s), and that, accordingly, the trial will proceed on the former, but the accused is (are) found Not Guilty on the latter charge(s).(4)
(1. *Delete remainder of this para, if submission not made.* 2. *Arguments on submission, answer and reply are recorded per Notes.* 3. *RP* 40 *fn* 1. *See MML p* 72 *para* 12-14 *and p* 81 *para* 42. 4. *Delete part not used. If accused acquitted on all charges, use second alternative in para D8.*)
NB: If trial proceeds, accused must be allowed great latitude in making his defence, and the Court should not stop his defence solely on ground of irrelevance. (*RP* 60(*C*), *114, 115.*)

D5. President to accused: You will now proceed with your defence.(1) You may, if you wish, give evidence yourself on oath as to the facts or your character or both, in which case you will be subject to cross-examination.(2) You may, however, make a statement without being sworn, and you will not be subject to cross-examination.(3) But a statement which could have been made on oath will not carry with the Court the same weight as sworn testimony.(4) You may call witnesses in your defence and as to character, whether you give evidence or make a statement or do neither.

President to accused: Do you wish to give evidence yourself as a witness, make a statement, or do neither? Ans.....
Do you intend to call witnesses on your behalf? Ans.....
Are they witnesses as to character only? Ans.....
(1. *RP* 155. 2. *RP* 40(*A*), *see* 80(*D*). 3. *RP* 40 *fn* 10. 4. *RP* 40 *fns* 2, 9.)

D6. Consequent on the answers recorded in para D5 the appropriate procedure for the defence is followed.(1)
(1. *RP* 114, 115, 116. *For procedure see Notes on back of Convening Order, CF A95. Evidence for accused as to his character should, if in his interest, be given before the finding. See RP* 46(*A*) *fn* 1, *B6*(*C*). *Note the further opportunity in para E1 of Record Form E. Record per Notes addresses, statement, evidence and any summing up by the JA under RP* 42, 103(*e*).)

D7. The Court is closed to consider the finding(s).(1) The finding(s) of the Court is (are) recorded in Part I of the Schedule.(2) The Court is re-opened.
(1. *RP* 43, 117(*A*). *See Notes in Part I of Schedule.* 2. *RP* 44(*A*).)

D8. The President announces the finding(s), if any, of Not Guilty, and states to the accused that the finding(s) of the Court on the .....charge(s), being subject to confirmation, will be promulgated later.(1)
Or, The President announces that the accused is found Not Guilty on all charges and is to be released forthwith, and that the proceedings are accordingly terminated. Part I of the Schedule is dated and signed.(2)
(1. *AA* 54(3) (*b*), *RP* 45, 120(*A*). 2. *AA* 54(3), *RP* 45, 117. *This alternative announcement is not applicable when there are pleas of Guilty outstanding and dealt with under Record Form B or C.*)

D9. The accused having been found Guilty on one or more of the charges, the proceedings are concluded by using Record Form E below.

RECORD FORM E—PROCEEDINGS ON CONVICTION BEFORE SENTENCE.

E1. President to accused: Do you wish to give evidence yourself or to call any witnesses as to your character?(1)
Ans NO SIR
(1. *If evidence has already been given by accused or his witnesses as to his character, delete this para. RP* 37(*C*) *fn* 4, 46 *fn* 1. *Accused and witnesses are sworn. Evidence recorded per Notes.*)

E2. The Prosecutor produces Statement as to Character and Particulars of Service(1), and certified true copy ~~(copies)~~ of Conduct Sheet(s)(2), purporting to refer to the accused, which he submits to the Defending Offr for examination, and then to the Court for admission in evidence. The Court is satisfied that these documents refer to the accused, because (i) they purport to be signed in the manner required by AA 163(l) (g) (h), and (ii) they purport to refer to (a) soldier having the same number, rank, name and corps as the accused. Admitted in evidence and marked Ex B and Ex C respectively.(3)
(1. *MFB* 355 *or AFB* 296. 2. *MFM* 6. 3. *RP* 46, *KR Can* 558. *If above documents not produced, see RP* 46 *fn* 1 *para* 1.)

E3. President to accused: Do you wish to address the Court on the Statement(s) and Conduct Sheet(s), and in mitigation of punishment?(1) Ans Yes sir by my defending Officer.....(2)
(1. *RP* 37(*C*), 46(*D*). 2. *Address, if any, recorded per Notes. Court should permit accused or his witnesses to prove on oath anything here or previously stated which would affect the amount of punishment. RP* 37(*F*) *fn* 7.)

E4. The President states that the Court is closed to consider the sentence, and that the sentence to be awarded by the Court, being subject to confirmation, will not be announced, but will be promulgated later, and the proceedings in open court are accordingly terminated.(1)
(1. *AA* 54(6), *RP* 120(*A*).)

E5. The Court considers the sentence.(1) The President records the sentence in Part I of the Schedule, which is dated and signed by him and the JA, if any.(2)
(1. *When several accused tried separately see RP* 240. *One sentence only, comprised of the punishment or punishments laid down in AA* 41, 44 *and its proviso, is to be awarded to cover all charges in all charge sheets on which accused found guilty. RP* 48. *As to sentences see AA* 44, 138, 182, *RP* 46-50, 69, 118, 119(*A*), *KR Can* 308, 330, 563-566, *Overseas RO* 309, 2323, *MML p* 60, 737-739. *As to sentences assigned for civil offences by the law of England see AA* 41(5), *MML p* 130. *When accused already under sentence of imprisonment or detention see AA* 44(15), 68(1), *KR Can* 564. 2. *RP* 50. *As to release from arrest by Confirming Offr see KR Can* 567. *As to assembly and disposal of record after trial see instrs on back of Convening Order.*)

PRESIDENT OR JA WILL INITIAL ALL DELETIONS AND ALTERATIONS.

9

CHARGE SHEET

The accused C37392 Private Victor FAUVELLE, 33 Cdn Corps Tps Comp Coy RCASC, a soldier of the Cdn Army Overseas is charged with:

First Charge
Sec 9(2) A.A.

WHEN ON ACTIVE SERVICE, DISOBEYING A LAWFUL COMMAND GIVEN BY HIS SUPERIOR OFFICER

in that he

at approx 2000 hrs 17 Nov 44 when ordered by the Duty Corporal to move his kit from the old guard room to the new guard room did not do so.

Second Charge
Sec 6(2)(F)A.A.

WHEN ON ACTIVE SERVICE, LEAVING HIS POST WITHOUT ORDERS FROM HIS SUPERIOR OFFICER

in that he

in the field absented himself from his post from approx 2240 hrs till 2330 hrs 18 Nov 44.

Third Charge
Sec 8(2)A.A.

WHEN ON ACTIVE SERVICE, USING INSUBORDINATE LANGUAGE TO HIS SUPERIOR OFFICER

in that he

at 1250 hrs 20 Nov 44 when being placed under arrest said to CSM Webb "some day I get you son-of-a-bitch."

G Walker Major
(G. Walker) Major
Commanding
33 Cdn Corps Tps Comp Coy RCASC.

In the Field
21 Nov 44

To be tried by Field General Court Martial.

D Ross-Smith
(D Ross-Smith) Lt-Col
Comd RCASC 2 Cdn C Tps

29 Nov 44

FIELD GENERAL COURT-MARTIAL

CFA96 (In lieu of AFAS) 40/PAS/1697 (2s63)

(Whether the accused to be tried is under his comd or not, a FGCM may on application to him be convened by any offr of Cdn Army Overseas, or of any other force if authorized in law, in immediate comd of troops on active service, subject to RP 105(C) and restrictions imposed by appropriate authy. AA 49, 50, RP 104-107, 114. As to the duties and privileges of the Convening Offr in dealing with the application see MML Chap V paras 20 and 23, RP 87(B).

There should be a separate Convening Order for each person to be tried separately by the same Court. RP 71(C), 109. As to separate charge sheets see RP 62, and as to separate trial on charges in the same charge sheet see RP 108. As to two or more accused charged jointly see RP 16, 109.

As to reasons for showing (a) permanent or confirmed rank, and (b) appmt, A/rank or A/appmt, if any, see AA 182, 183, fns. KR Can 308, 328, 330.)

ACCUSED.

Number.	(a) Prmnt R. (b) Appmt, A/R or A/Appmt.	Full Christian Names.	Surname.	Unit.
C-37392	Private	Victor	FAUVELLE	33 Cdn C Tps Comp Coy RCASC

CONVENING ORDER.

1. Whereas complaint has been made to me, the undersigned, that the person(s) named above as the accused, being subject to military law, has (~~have~~) committed the offence(s) set forth in the Charge Sheet(s) attached and on (date) 29 Nov 44 endorsed by me, (~~or by an offr of my staff for me~~), "To be tried by Field General Court-Martial".

2. And whereas I am of opinion that it is not practicable that such offence(s) should be tried by an ordinary General Court-Martial; (~~and that it is not practicable to delay the trial for reference to a superior qualified offr.~~)

(Delete part in brackets when not required for compliance with RP 105(C).)

3. I hereby convene a Field General Court-Martial to try the said person(s), and to consist of the Offrs appointed or detailed hereunder.

4. ~~I am unable to appoint (a) three Offrs to form the Court, (b) a Fd Offr as President, for the reasons I have attached hereto.~~

(AA 49, RP 106(B), 107(A). Delete the whole or part, if not applicable.)

5. I also appoint as Judge-Advocate thereat the Offr mentioned hereunder.

(RP 106(E). Delete, if none appointed.)

PRESIDENT.

(Rank.)		(Must be named. RP 106.)	(Unit.)
Maj	D C Shaw		2 Cdn MAC RCASC

MEMBERS.

(Rank.)		(Named or detailed. RP 106.)	(Unit.)
Capt	R Church		2 Cdn C Tpt Coy RCASC
Lt	D W Slater		34 Cdn C Tps Comp Coy RCASC

WAITING MEMBER.

(Rank.)		(Named or detailed, if any. RP 106.)	(Unit.)
	N/A		

JUDGE-ADVOCATE.

(Rank.)		(Must be named, if any. RP 106.)	(Unit.)
Capt	G H Jermyn		HQ 2 Cdn Corps

On Active Service in the Fd

in HOLLAND (Country.)

(Signed personally. RP 105 fn 2.) Lt-Col (Rank.)

Date 29 Nov 44

(G D Ross-Smith)
Commanding RCASC 2 Cdn C Tps
Convening Officer.

CONVENING OFFR WILL INITIAL ALL DELETIONS AND ALTERATIONS

(See overleaf for oaths and notes for use on trial.)

MEDICAL OFFICER'S CERTIFICATE

K.R. (Can) Para 557

I certify that I have this morning examined C37392 Pte FAUVELLE, Victor, of 33 Cdn Corps Tps Comp Coy RCASC and in my opinion he is fit ~~unfit~~ to undergo trial by court-martial.

Station Field.

Date 2 Dec 44

D.A. Kennedy

Medical Officer

STATEMENT

PLEA IN MITIGATION OF PUNISHMENT PTE V. FAUVELLE

While Pte Fauvelle pleads guilty to charges as laid, the defence wishes to brign to the attention of the Court the following facts: Previous to leaving England, Fauvelle had been going with a girl for a period of one year. After having been posted to C.B.R.G. as reinforcement for overseas, he was told that the girl was going to have a baby. He immediately took steps to try and marry her, and in the meantime sent her money regularly to help her out. Due to exigencies of the service, permission to marry could not be granted and Fauvelle was sent to France. The child was born in August. While in France he tried to send her money regularly but the money orders were not obtainable. He contacted the R.C. Padre, Father Dillon in this connection and asked him if he could secure money orders for him, but this was to no avail. Father Dillon certifies that Fauvelle made this request many times. Pte Fauvelle is prepared to accept his punishment. His only worry is that while he is serving punishment he will not be able to support his proposed wife and child. Fauvelle has the makings of a good soldier and if given proper employment, and a chance to look after his personal affairs, he probably would be found willing and able. He has expressed a willingness to transfer to Infantry if given the chance. All Fauvelle's troubles are caused by his worries which are only natural, and the change requested, if granted would undoubtedly bring out the good that is in him.

Lt.

DEFENDING OFFICER

EXHIBIT A.

Summary of evidence in the case of C37392 Pte Victor FAUVELLE, 33 Cdn Corps Tps Comp Coy RCASC, Cdn Army Overseas charged with, disobeying a lawful command, leaving his post without orders, resisting an escort and using insubordinate language.

The Commanding Officer directs that the evidence be taken on oath.

First Witness

B84084 Cpl Niblett O.L. 33 Cdn Corps Tps Comp Coy RCASC, Cdn Army Overseas having been duly sworn states:

I am B84084 Cpl Niblett O.L. 33 Cdn Corps Tps Comp Coy RCASC Cdn Army Overseas. At approx 2000 hrs 17 Nov 44 I proceeded with Pte Smith to the old Guard Room to pick up Pte Fauvelle's kit. I met the said soldier coming out of the guard room; whereupon I ordered him to get his kit packed and place it in the vehicle I had with me and to proceed to the new Guard Room. I waited for approx 45 minutes and then entered the guard room. I asked Pte Findlay who was there to tell Pte Fauvelle to get a move on. He reported back and informed me Pte Fauvelle was not there. I repeated the order and instructed Pte Findlay to make another search. He reported back a second time stating Pte Fauvelle was not there. I proceeded back to the new guard room in a lorry driven by Pte Smith without Fauvelle's kit.

At approx 2240 hrs the 18 Nov 44 I was ordered by the Offr Comd to ascertain the whereabouts of the guard on duty at Coy HQ. I patrolled the beat, looked in the billets, at the rear of the buildings and in and around the vehs. I found no trace of the guard. Pte Fauvelle was the guard on duty at this time and I knew this as I was Orderly Corporal and had posted him to his duty at 2000 hrs. I reported the absence of Pte Fauvelle to the CSM at 2300 hrs the 18 Nov 44.

Questioned by the Officer Taking the Summary

Q-1 Was Pte Fauvelle posted, instructed as to his beat, and did he relieve another piquet?

A-1 Yes, sir. He relieved another piquet. I told him when I posted the piquet in the first instance as to his beat and had not changed the beat. No other Offr or N.C.O. had given permission for Pte Fauvelle to leave his post.

Q-2 How was Pte Fauvelle posted as guard?

A-2 He was told by me on the 12 Nov when he commenced a weeks tour of guard duty that he was to be a guard for a period of one week, to be properly dressed at all times and other normal guard duties. He was instructed by me that his post was from the kitchen to the HQ's Orderly Room which included several stocks of Compo Packs. He was to be responsible for the Compo Packs while on duty and to challenge and question all persons unknown to him that transgressed his post. He was instructed he would be four hours on duty and eight hours off commencing at 2000 hrs 12 Nov 44. The changing of sentries was automatic from then on.

Q-3 Was the beat changed by any N.C.O. in your presence after you had instructed the guard on the 12 Nov 44?

A-3 Yes sir, by Sgt Scott on the 16 Nov at approx 1830 hrs.

Q-4 Was Pte Fauvelle present when Sgt Scott ordered the change of beat?

A-4 Yes sir, he was.

O. L. Niblett
Signature of Witness

Second Witness

B83802 Sgt Scott E.G. 33 Cdn Corps Tps Comp Coy RCASC, Cdn Army Overseas having been duly sworn states;

I am B83802 Sgt Scott E.G. 33 Cdn Corps Tps Comp Coy RCASC Cdn Army Overseas. I was present when Pte Fauvelle was posted as guard at 2000 hrs on the 12 Nov 44. He was ordered to patrol an area from Coy HQ to the kitchen which included several stacks of Compo Packs. At 1830 hrs on the 16 Nov 44 I had occasion to change the post of the Coy HQ guard as the Coy HQ had been moved that day. At the time stated I instructed all the guards incl Pte Fauvelle that the post for which they would be responsible would be immediately in front of the HQ Office Lorry. I posted the guard Pte Gaunce at 1830 hrs and he was relieved by Pte Fauvelle at 2000 hrs.. There was no other change of beat during this guards tour of duty.

Questioned by the accused.

Q-1 Did you instruct me personally and where as to this change of beat?

A-1 I instructed you in the house adjoining the guard room at 1830 hrs on 16 Nov 44.

Questioned by the Officer Taking the Summary

Q-1 Who other than the guard was present where you ordered the change of beat?

A-1 Cpl Niblett, sir.

...E.G. Scott.....
Signature of Witness

Third Witness

B84387 Pte Smith H.E. 33 Cdn Corps Tps Comp Coy RCASC, having been duly sworn states:

I am B84398 Pte Smith H.E. 33 Cdn Corps Tps Comp Coy RCASC Cdn Army Overseas. On the 17 Nov 44 at approx 2000 hrs I drove Cpl Niblett in my lorry to the old guard room to pick up a guard and his kit. In my presence Cpl Niblett ordered a soldier to pick up his kit and place it on the lorry. Cpl Niblett entered the guard room and returned in about ten minutes, I drove Cpl Niblett back to Coy HQ.

The accused declines to cross examine this witness.

...H.E. Smith.....
Signature of witness

Fourth Witness

B83872 CSM Webb J.T. 33 Cdn Corps Tps Comp Coy RCASC, having been duly sworn states;

I am B83872 CSM Webb J.T. 33 Cdn Corps Tps Comp Coy RCASC, Cdn Army Overseas. On 18 Nov 44 at approx 2300 hrs I was awakened by the Offr Comd and the Duty Corporal and told that the Coy HQ piquet was not on duty on his post. I made a thorough search of the guard's post and immediate area and could not find the guard. At approx 2330 hrs Pte Fauvelle walked down the street to Coy HQ where I was standing I recognized him as the guard on duty. I asked him where he had been and he replied

"on the street." I warned him and placed under open arrest and told him charges would be preferred.

On the 20 Nov 44 at approx 1250 hrs in the course of duty I placed Pte Fauvelle under close arrest. I ordered L/Cpl Ferri to escort him to the guard room. Pte Fauvelle turned about and walked away. I ordered Pte Smith G.A. to assist L/Cpl Ferri to take Pte Fauvelle into arrest. Pte Smith and L/Cpl Ferri took hold of Pte Fauvelle by the arms, he shrugged the escort off and said looking straight at me, "I get you some day son-of-a-bitch." He turned walked away and the escort went after him and talked to Fauvelle and took Fauvelle to the guard room.

Questioned by the accused;

Q-1 The statement you claimed I made, "I get you some day son-of-a-bitch" are those my exact words?

A-1 Yes, definitely.

.....
Signature of Witness

Fifth Witness

B83864 L/Cpl Ferri N. 33 Cdn Corps Tps Comp Coy RCASC, Cdn Army Overseas having been duly sworn states;

I am B83864 L/Cpl Ferri N. 33 Cdn Corps Tps Comp Coy RCASC Cdn Army Overseas. On the 20 Nov 44 at approx 1250 hrs the CSM ordered me to put Pte Fauvelle, the accused, whom I now recognize under close arrest. I proceeded to carry out this order but Pte Fauvelle refused and said, "No I will not go in the guard room" and walked away. The CSM called the guard and ordered him to assist me. Pte Fauvelle shoved away from us and walked down the road. He turned, faced the CSM and said "I will get you son-of-a-bitch, and walked on down the street. Pte Smith and I went after him, talked to him and escorted him to the guard room.

The accused declines to cross examine this witness.

N Ferri
.....L/Cpl Ferri N.....
Signature of Witness

Sixth Witness

H51957 Pte Smith G.A. 33 Cdn Corps Tps Comp Coy RCASC, Cdn Army Overseas having been duly sworn states;

I am H51957 Pte Smith G.A. 33 Cdn Corps Tps Comp Coy RCASC. On the 20 Nov 44 at approx 1250 hrs I was on guard at Coy HQ. The CSM ordered me to assist L/Cpl Ferri in placing the accused Pte Fauvelle whom I now recognize under arrest. L/Cpl Ferri and myself took Pte Fauvelle by the arms and he shrugged away from us. The CSM was standing in front of us and Pte Fauvelle faced the CSM and said, "I'll get even with you you son-of-a-bitch" or words to that effect. He then walked down the road. We walked up to him and persuaded him to come back to the guard room which he did.

The accused declines to cross examine this witness.

G.A. Smith
.....
Signature of Witness

The accused was warned as follows;

"Do you wish to make any statement or to give evidence on oath? You are not obliged to say anything or give evidence unless you wish to do so, but whatever you say or any evidence you give will be taken down in writing, and may be given in evidence."

The accused; I have nothing to say at this time.

R. Fauvelle.....
Signature of accused

I certify that R.P. 4 has been complied with.

Taken by me in the Field in the presence and hearing of the Accused, this twenty first day of November 1944.

W. Wilkins Capt
.....
Signature of Officer Taking Summary

I desire that the Officer Commanding appoint an offr to defend me at my forthcoming trial by F.G.C.M.

.....
Signature of accused

EXHIBIT B.

ARMY FORM B.296.

Statement as to Character and Particulars of Service of Accused.

Number.	*Rank.*	*Name.*	*Regiment (or as the case may be).*
C/37392	Pte	FAUVELLE, V.	33 Cdn Corps Tps Comp Coy R.C.A.S.C.

1. The following is a fair and true summary of the entries in the regimental and squadron, battery or company conduct sheets† of the accused, exclusive of convictions by a court martial or a civil court, of summary awards under section 47 of the Army Act, and of cases in which trial has been dispensed with :—

NOTE.—At a trial by field general court martial this summary may be compiled from the field conduct sheet. The conduct sheet(s) mentioned should be produced in court with this statement but not annexed to the proceedings.

† See para. 677, K.R., 1940.

* The numbers herein stated should correspond with the number of *entries* in the conduct sheets, prominence being given to the most serious offence in each entry, and to any recognised special acts of gallantry or distinguished conduct.

INSTRUCTION.—If the charge is for drunkenness the entries for drunkenness must be stated separately and dated.

	* Within last 12 months.	*Since Enlistment.
For Absence without Leave Sec15(1)	times TWO	times EIGHT
For	times	times
For Negligent Driving Sec 40	times	TWO times
For Breaking Barracks Sec 10(4)	times	ONE times
For Conduct Sed 40	times	THREE
For Escaping Sec 22	times	ONE times

[illegible] ~~xx~~

[illegible] of the accused.

2. ~~The accused has not previously served~~

Previous convictions† of the accused by a court martial or a civil court, summary awards under section 47 of the Army Act, and dispensations with trial under section 73 of the Army Act, are set out in the schedule annexed to this statement.

3. The accused is not under sentence at the present time, ~~nor has the accused at the present time any sentence to undergo or~~ [illegible]

4. The accused has been in confinement, awaiting trial on the present charges, for nil days in civil custody, and 12 days in military custody, making a total of 12 days, of which nil days were spent in hospital.

5. The present age of the accused according to his record of service / attestation paper is 27 years

6. The date of his ~~[illegible]~~ attestation specified in his attestation paper is 13 Mar 41

7. The service which the accused is allowed to reckon towards discharge or transfer to the reserve is

8. The accused is entitled to deferred pay or gratuity in respect of service.

9. The accused is entitled to reckon 3 yrs 7 mos service for the purpose of determining his pension, etc.

10. The accused is in possession of, or entitled to, no military decoration or military award (*or* is in possession of *or* entitled to (*state any military decoration or reward*)). C.V.S.M. and clasp

11. ~~(State whether the accused has forfeited any service for the purpose of the accused's~~ [illegible]

12. ~~The accused has undergone the sentence of~~ [illegible]

(72330) Wt.24695/1730 30,000 10/43 A.& E.W.Ltd. Gp.698
(20908) Wt.55034/1499 12,000 5/44 " "

Schedule of Convictions by a Court Martial or Civil Court, of summary awards under Section 47 of the Army Act and of cases in which trial has been dispensed with of accused.

No. C/37392 Rank Pte Name FAUVELLE, V. of 33 CDTCC RCASC Regiment (or as the case may be).

(INSTRUCTION— A verbatim extract from the regimental books, stating these convictions and dispensations with trial, must be inserted.)

Description of court by which tried, or status of officer disposing of the charge or dispensing with trial	Date and place of trial, or summary award under A.A. 47, or of order dispensing with trial	Charges upon which convicted, or in respect of which trial was dispensed with	Sentence of the court or authority disposing of the charge, or order of the dispensing authority	Punishment remitted
	24 Feb 1943			
F C C M	Field	(1) A.A. Sec 15(1)	60 Days Dentention	
		(2) A.A. Sec 15(1)		
		(3) A.A. Sec 40		
		(4) A.A. Sec 40		
		(5) A.A. Sec 40		
		(6) A.A. Sec 15(1)		
		(7) A.A. Sec 22		
		(8) A.A. Sec 15(1)		

I HEREBY CERTIFY that the foregoing schedule of convictions and dispensations with trial is a true extract from the regimental books in my custody.

Signed this 28th day of November 1944

Adjutant 33 Can Corps Troops Coy R.C.A.S.C.

13. In the rank of ..... years.
In the rank of ..... years.
In the rank of ..... years.

(INSTRUCTION—*If any matter in para 4 of the Pink Pay Book paragraphs cannot be stated from the regimental books the paragraph must be struck through, except that in the case of a trial by field general court-martial the information may be collected from such sources as are available and the paragraphs concerned amended accordingly.*)

EXHIBIT C

No C37392 Name Fauvelle, V. | Sqn, Battery, or Company | Corps RCASC | Date of enlistment 13Mar41 | GC Badges | Service or Proficiency Pay | MFM: 6 (APR 132) 40/P&S/136 (3428)

Date of last entry in Company Conduct Sheet | No and date of last drunk | Period not reckoning towards freedom from extra fine | Sheet No | Signature OC Company, etc | Character

Place	Date of offence	Rank	Cases of drunkenness	OFFENCE	Names of Witnesses	Punishment awarded	Date of award or of order dispensing with trial	By whom awarded	Remarks
In accordance with attestation 13 Sep 41. ORO 319 previous sheet destroyed on completion of six months service from date of Cases of drunkenness NIL									
Field	29 Nov	Pte		A.A. Sec 15(1) AWL 2 days 21 hrs 16 mins (App by Prov)	Documentary (Prov)	7 days pay	7 Dec 42	Lt Col. Bonnick	Forf 3 days pay
Field	26DEc	Pte		(1) AA Sec 15(1) AWL 1 day 8 hrs		60 days Detn	24 Feb 43	FGCM	60 days pay
	3Jan			(2) AA Sec 15(1) AWL 6 dyas 30 mins					22 days pay
	3Jan			(3) AA Sec 40 Conduct False Pass					34 days pay
	3Jan			(4) AA Sec 40 Giving False Information to Prov					
	3Jan			(5) AA Sec 40 Conduct Imp using A/Gas Eqpt					
	12Jan			(6) AA Sec 15(1) AWL 6 dys 5 hrs 15 mins					
	19Jan			(7) AA Sec 22 Whilst in confinement escapint					
	6Feb			(8) AA Sec 15(1) AWL 5 dys 14 hrs 30 mins					

(PTO)

Place	Date of offence	Rank	Cases of drunkenness	OFFENCE	Names of Witnesses	Punishment awarded	Date of award or of order dispensing with trial	By whom awarded	Remarks
Field	20Apr	Pte		AA Sec 40 Neglect - Negligence driving a CAV	Capt W.C. Beamish	8 days pay	21Apr43	Major J FitzRandolph	
Field	20May	Pte		AA Sec 40 Neglect - Negligent driving a CAV	A/S/Sgt Sheffield	3 days C.B.	21May43	Major J FitzRandolph	
Field	29May	Pte		AA Sec 15(1) AWL 4 hrs	Sgt.Hamilton	14 dys CB	1Jun43	Major FitzRandolph	
Field	5NOV	Pte		(1) AA Sec 15 (1) AWL 2 days 1 hr. (2) AA Sec 10(4) Breaking Barracks	CSM Gardiner Sgt Adair	14 dys Pay 14 dys CB	8Nov43	Major DA Ferguson	Auto Forf 3 days pay
				"Awarded Canadian Volunteer Service Medal and Clasp DO 4 d/21 Jan 44."					
Field	14Aug	Pte		AA Sec 15(1) AWL 7 hrs	S/Sgt Munson L/Cpl Hunter	28 dys pay	18Aug44	Major W.H. Heffernan	1 dys pay CRI 149(2)

No C37392 Name Fauvelle, V | Sqn, Battery, or Company | Corps RCASC | Date of enlistment 13Mar41 | GC Badges | Service or Proficiency Pay | MFM 6 (AFB 122) 40/PAS/136 (3458)

Date of last entry in Company Conduct Sheet | No and date of last drunk | Period not reckoning towards freedom from extra fine | Sheet No | Signature OC Company, etc | Character

Place	Date of offence	Rank	Cases of drunkenness	OFFENCE	Names of Witnesses	Punishment awarded	Date of award or of order dispensing with trial	By whom awarded	Remarks
Field	28Sep	Pte		A.A. Sec 15(1) AWL TTA 6 hrs 15 mins	Cpl Conroy FC Cpl Seitzler E.F.	28 dys FP 28 dys pay	2 Oct 44	Major W.H. Heffernan	s/Forf of 1 days pay FRI 149(1)(a)

Certified true copy from the Regimental Books in my custody.

Capt & Adjt.

(PTO)

I desire the services of an officer to defend me at my forthcoming trial by FGCM

signed "V. FAUVELLE"

Certified true copy of original statement, held by the officer having custody of the regimental documents,

Adjutant 33 Cdn Corps Troops Coy R.C.A.S.C

4

SCHEDULE.

PART I. PLEA(S), FINDING(S) AND SENTENCE.

Accused : C-37392 Pte Fauvelle, V 33 Cdn C Tps Comp Coy RCASC

Charge. (Insert " alternative " where applicable.)	Plea. (See Instrs p 2.)	Finding. (See note below.)	(Space for use as required for further charges, accused charged jointly, special findings, etc.)
1st	Guilty	Guilty	
2nd	Guilty	Guilty	
3rd	Guilty	Guilty	
4th			
5th			
6th			

(Note : As to findings for lesser offences see AA 56, RP 44 ; findings on alternative charges see MML p 483 fn 4 para 2, RP 44 ; special findings see RP 44 and MML p 753, and in loss of kit see RP 44 fn 6.)

~~At present under sentence for~~ ~~not~~ ~~beginning on (date)~~ (1)

(1. Insert sentence being served, or delete, if not applicable. See RP 46(A). Information should be found on MF B355 or AF B296.)

Time in confinement awaiting present trial—a total of 12 days, of which 0 days were spent in hospital.(1)

(1. See RP 46(A) fn 2. Information should be found on MF B355 or AF B296 admitted in evidence under E2.)

Sentence Awarded by the Court :

To undergo detention for six months

(Sgd) C.W. Jermyn, Capt — 2 Dec 44 — (Sgd) D.C. Shaw, Major

Judge-Advocate, if any. — Date awarded. — President. (RP 45, 50.)

(See back of Convening Order as to assembly and disposal of record after trial.)

PART II. MINUTE WHERE CONFIRMATION RESERVED. (AA 54(5), RP 120(F), MML p 760.)

Date ..... (Sgd) ..... Commanding .....

PART III. DECISION OF CONFIRMING OFFR ON FINDING(S) AND SENTENCE.

(For duties and powers see AA 54, 57, RP 37(D) fn 6,46(A), 51-56, 120, MML pp 759-761, KR Can 567-577. Acquittals require no confirmation and cannot be revised : AA 54(3). Sending back finding or sentence for revision by Court : AA 54(2), RP 120(G). If not confirmed, accused may be tried again : AA 157, MML p 64. Minute of confirmation or non-confirmation may be altered before promulgation : RP 53, MML p 65. Quashing after promulgation : KR Can 573. Duties and powers of reviewing offrs : AA 57, 57A, RP 53A, 54. The Confirming Offr must sign here personally. AA 172 fn 1.)

My decision on the finding(s) and sentence set forth in Part I is :

Confirmed

~~I direct that the accused be not committed to prison or detention barracks until further orders.~~(1)

(1. AA 57A. Delete if not used.)

(Sgd) G.D. Ross-Smith Lt-Col

Date 2 Dec 44 — Commanding CRASC 2 Cdn Corps Troops — Confirming Officer.

PART IV. PROMULGATED AND EXTRACTS TAKEN. (RP 53, KR Can 576, 577.)

Accused.	Date.	Signature of Offr.
C-37392 Pte Fauvelle,V.	4 Dec 44	(sgd) C. Wishing, Capt Adjt 33d Cdn Corps Troops Company RCASC

ALL DELETIONS AND ALTERATIONS WILL BE INITIALLED.

4 N-11 C

CFA96 (In lieu of AFA53) 40/P.R.S.1698 (2804)

FIELD GENERAL COURT-MARTIAL

Convened by Order of Lt-Col G.D. Ross-Smith Comd RCASC 2 Cdn C Trps dated 29 Nov 44

ACCUSED.

(As to the trial of two or more charged jointly see RP 16, 71, 109. As to reasons for showing (a) permanent or confirmed rank, and (b) appmt, A/rank or A/appmt, if any, see AA 182, 183, fns, KR Can 308, 328, 330.)

Number.	(a) Prmnt R. (b) Appmt, A/R or A/Appmt.	Full Christian Names.	Surname.	Unit.
C-37392	Pte	Victor	Fauvelle	33 Cdn C Tps Comp Coy RCASC

PROCEEDINGS OF TRIAL.

Held in the Fd in (country) Holland on (date(s)) 2 Dec 44

RECORD FORM A—OPENING PROCEEDINGS AND ARRAIGNMENT. XV-72

A1. The President, Members, ~~waiting Member,~~ JA, ~~if any,~~ and Offrs ~~under instr, if any,~~ assemble, and the Court is closed.

(PRINTED MATTER, NOT IN ITALICS FOR GUIDANCE, WILL BE DELETED, IF NOT USED OR APPLICABLE, AND INITIALLED BY PRES OR JA. The Schedule referred to throughout is on p 4. Citations do NOT include all relevant fnm ROs. For guidance on procedure when a variation in this form arises, see form for GCM in MML pp 741 to 759. A brief record of such variation will be made and given a number having reference to appropriate or preceding para number herein. See back of Convening Order, CF A95, for oaths and instrs on how to record addresses, evidence, etc, which instrs are hereafter called "Notes". As to general provisions for conducting the trial see AA 53, RP 56, 63-70, 73, 74, 94, 103, 119, 132.)

A2. The President initials and lays before the Court the Convening Order and Charge Sheet(1) attached thereto.(2) The Court is satisfied that it is properly convened and constituted,(3) accused is (~~are~~) amenable to military law, and each charge discloses an offence.(4)

(1. As to use of Summary of Evidence see RP 17 fn 6. 2. AA 49, 50, RP 105-107. 3. RP 11-13, 23, 24.)

A3. The Court is opened. The accused is (~~are~~) brought before the Court. At 1100 hours trial commences.

A4. The Prosecutor produces a Medical Certificate that accused is (~~are~~) fit to undergo trial by court-martial.(1) ~~The Prosecutor informs the Court that accused elected to be tried by court-martial instead of being dealt with summarily by the CO.(2)~~

(1. KR Can 557. 2. AA 46(8), RP 60 fn 1. For effect see KR Can 563(c). Delete, if not applicable.)

A5. ~~President to accused : Do you object to ..... as interpreter ? Ans .....~~

~~The Interpreter is sworn.(1) Do you object to ..... as shorthand writer ? Ans .....~~

~~The shorthand writer is sworn.(1)~~

(1. RP 72. Delete, if none employed.)

A6. The Convening Order and names of the President and Members of the Court are read to the accused.(1)

President to accused : Do you object to be tried by me as President or by any of the Members of the Court ?

Ans NO SIR (2)

(1. RP 110. 2. If no objection, waiting member retires. RP 68(8). If objection, see procedure AA 51, RP 25, 71, 18, MML p 742.)

A7. The President, Members, JA, ~~if any, and Offrs under instr, if any,~~ are sworn.(1) The following are the ranks, names and units of the offrs comprising the Court, etc :

President	Major	D.C. Shaw	2 Cdn RAC RCASC
Member	Capt	R. Church	2 Cdn C Tps Coy RCASC
Member	Lt	D.W. Slater	34 Cdn C Tps Comp Coy RCASC
Judge-Advocate	Capt	C.W. Jermyn	HQ 2 Cdn Corps
Prosecutor	Capt	A.P. Wishing	33 Cdn C Tps Comp Coy RCASC
Defending Offr	Lt	P. McKenty	33 Cdn C Tps Comp Coy RCASC

Questions by President : Is the Prosecutor a lawyer ? Ans NO Is the Defending Offr a lawyer ? Ans NO (1)

(1. RP 26, 27, 109, 111. List of offrs under instr will be returned separately with proceedings for information of Conv Offr.)
(2. If Pros a lawyer and Def Offr not, accused is entitled to an adjournment when RP 89 (8) and fn 2 were not followed. See DI p 3.)

A8. The accused ..... before arraignment make(s) (no) (~~a~~) plea(s) (1)

(1. If a special plea is made for separate trial on one or more charges (RP 62(E), 109), or as to the jurisdiction of the Court (RP 34, 35(A), 113), or in bar of trial (RP 36), or as to accused's mental fitness to stand trial (AA 130, RP 57), or by one of several accused charged jointly to be tried separately (RP 16, 71), such plea, the addresses made in support or against, the evidence, if any, and finding are recorded per Notes. For forms of record see references in fns to RsP cited. Insert in A8 rank and name of the accused making the plea.)

A9. The accused is (~~are~~) arraigned (~~separately~~) on all charges in the charge sheet.(1) The accused does (~~do~~) not object to any charge.(2) There is no amendment to be made to the Charge Sheet.(3) The President records the pleas in Part I of the Schedule.

(1. RP 31, 112. See para 1 of Instrs p 2. When more than one Charge Sheet see RP 62 ; when several accused to be tried separately see RP 71(C), and use separate copies of CF A96 to record proceedings. 2. RP 32, RP 33. If otherwise, delete and make appropriate record per Notes.)

A10. The Court (~~is cleared and~~) considers the Instrs on Procedure after Arraignment at top of p 2. The proceedings are continued on Record Form E and B

PRESIDENT OR JA WILL INITIAL ALL DELETIONS AND ALTERATIONS.

2 Cdn C Bk III, page 84

INSTRUCTIONS ON PROCEDURE AFTER ARRAIGNMENT.

1. *The accused may not plead or be found Guilty on more than one of two or more charges laid in the alternative.* (*RP* 37(*A*).) *As to withdrawal of alternative charges by Prosecutor see RP* 35(*C*). *No other charge can be withdrawn for any reason without authy from Convening Offr. If Convening Offr concurs, Court may accept plea of Guilty to lesser, etc, offence.* (*RP* 44(*II*).) *Accused may change a plea of Not Guilty to Guilty during trial.* (*RP* 38.) *As to refusing to plead or not pleading intelligibly see RP* 35(*A*). *As to plea when sentence may be death see RP* 35(*D*).

2. *The proceedings on each charge sheet* (*RP* 62) *after arraignment will be conducted as follows in the respective circumstances stated :*

I. If pleas to all charges are GUILTY, use Record Form B below.

II. If pleas to all charges are NOT GUILTY, use Record Form D on p 3.

III. If pleas to some charges are GUILTY and to other charges are NOT GUILTY and,

(a) Such mixed pleas occur when there are no alternative charges in the Charge Sheet, use Record Form C below. (*RP* 37(*A*).)

(b) Such mixed pleas occur in a set of two or more charges laid in the alternative, see RP 37 (*A*) *and fn* 2 *as to discretion of Court, (i) to try the accused on all such alternative charges as if he had pleaded Not Guilty and withdrawal of witnesses from Court see RP* 81, 82 ; *questioning of accused see RP* 80, 87(*C*), 92(*B*), *and of witnesses see RP* 83-85 ; *calling or re-calling of witnesses by Court etc see RP* 75-79, 86, 116 ; *use of Summary of Evidence at Trial see RP* 17(*E*) *fn* 6 ; *and responsibility of JA or Pres to record proceedings see RP* 94, 96.

(ii) to record the pleas as the findings of Court. After deciding between (i) and (ii), Court will thereto, or, (ii) to record the pleas as the findings of Court. See MML p 744 *Instrs* (2). *proceed under foregoing instrs as may be appropriate to result of its decision.*

3. *As to responsibility of President to accused see RP* 59, 60(*C*) ; *powers and duties of JA see RP* 103 ; *duty of Prosecutor see RP* 60(*A*) (*B*) ; *duty and privileges of accused and Defending Offr see RP* 60(*C*), 87(*C*), 91, 92 ; *swearing and withdrawal of witnesses from Court see RP* 81, 82 ; *questioning of accused see RP* 80, 87(*C*), 92(*B*), *and of witnesses see RP* 83-85 ; *calling or re-calling of witnesses by Court etc see RP* 75-79, 86, 116 ; *use of Summary of Evidence at Trial see RP* 17(*E*) *fn* 6 ; *and responsibility of JA or Pres to record proceedings see RP* 94, 96.

RECORD FORM B—PROCEEDINGS ON PLEAS OF GUILTY TO ALL CHARGES.

B1. The President or JA, if any, complies with RP 35(B) by explaining to the accused the nature and meaning of the charge(s)(1), and that on his plea of Guilty there will be no regular trial but merely a consideration of the sentence to be awarded after he has been given an opportunity to make a statement in reference to the charge(s), call witnesses as to character and make an address in mitigation of punishment.(2)

(*1. RP 35 fn 3. 2. MML p 54 para 47.*)

B2. President to accused : The Court will now receive any statement you desire to make in reference to the charge(s).(1) If it appears from your statement that there are circumstances which indicate that you do not understand the effect of the plea of Guilty(2), or which show provocation or extenuation in respect of which in your interest the witnesses for the Prosecution should be examined(3), we shall advise you to change your plea to Not Guilty. In making a statement you will not be sworn or subject to cross-examination ; and anything you say will not be used in evidence against you after you change your plea. If, however, it appears to the Court that your statement affects only the amount of punishment to which you are liable, you will not be advised to change your plea and you will be given an opportunity later to prove your statement by sworn testimony, if you so desire.(4)

President to accused : Do you wish to make a statement ? Ans NO SIR (5)

(*1. RP 37(B). 2. RP 37(D) fn 6. 3. RP 35(B) fn 5 para 3, MML p 54 para 47. 4. See para E3 of Record Form E. 5. Statement, if any, recorded per Notes.*)

B3. The Court considers the accused's statement.(1) ~~The Court decides (not) to advise accused to change his (their) plea(s) of Guilty to Not Guilty on charge(s). The accused is (are) so informed, and he (they) change(s) his (their) plea(s) on charge(s). Part I of the Schedule is amended accordingly.~~

(*1. Court may be closed to consider the statement. Delete whole or part not used.*)

B4. On the charge(s) to which the plea(s) of Guilty is (are) not changed the President records finding(s) of Guilty in Part I of the Schedule.(1)

(*1. RP 35(B). If any plea(s) is (are) changed, use Record Form C or D as appropriate.*)

B5. The Summary of Evidence is marked Ex A , initialled and read aloud by the President.(1)

(*1. If there is no Summary, or if it is inadequate, comply with RP 37(B). If there is any evidence inconsistent with any plea standing as Guilty, Court will advise accused to change such plea and, if changed to Not Guilty, try such charge(s) by use of paras D1 to D8 inclusive of Record Form D on p 3. RP 37(D).*)

B6. The accused having been found Guilty on one or more of the charges, the proceedings are concluded by using Record Form E on p 3.

RECORD FORM C—PROCEEDINGS ON MIXED PLEAS OF GUILTY AND NOT GUILTY.

C1. As to the charges on which accused pleaded NOT GUILTY the trial is continued by using paras D1 to D8 inclusive of Record Form D on p 3 before proceeding with C 2.(1)

(*1. RP 37(A) (E).*)

C2. The charges on which accused pleaded GUILTY are read to him (them) again, and the trial is continued by using paras B1 to B5 of Record Form B above.(1)

(*1. Under B5 such parts only of the Summary of Evidence are read as relate to the charges dealt with under C2. If any plea is changed to Not Guilty, trial thereon proceeds by complying with paras D1 to D8 inclusive in Record Form D on p 3 and making an appropriate record thereof on a separate sheet.*)

C3. The accused having been found Guilty on one or more of the charges, the proceedings are concluded by using Record Form E on p 3.

PRESIDENT OR JA WILL INITIAL ALL DELETIONS AND ALTERATIONS.

RECORD FORM D—PROCEEDINGS ON PLEAS OF NOT GUILTY TO ALL CHARGES.

D1. President to accused : Do you wish to apply for an adjournment on the ground that any of the rules relating to procedure before trial have not been complied with, and that you have been prejudiced thereby, or on the ground that you have not had sufficient opportunity to prepare your defence ? Ans.....(1)

(*1. If "yes", see RP 39(A) for procedure. Statement or evidence, if any, is recorded per Notes.*)

D2. The Prosecutor makes (an) (no) opening address.(1)

(*1. RP 39(B), 60(A) (B), 90, 92(C) (D). Record address per Notes, subject to RP 95(C).*)

D3. The evidence for the Prosecution is taken.(1)

(*1. RP 39(C), 114, KR Con 555. Record evidence per Notes. As to Prosecutor giving evidence himself see RP 39(D) (E).*)

D4. The Prosecution is closed.(1) The Defending Offr submits that the evidence for the Prosecution does not establish a prima facie case against the accused on the.....charge(s).(2) The Court is closed, and considers the submission.(3) The Court is re-opened, and the President announces that the submission is disallowed on the.....charge(s), and allowed on the.....charge(s), and that, accordingly, the trial will proceed on the former, but the accused is (are) found Not Guilty on the latter charge(s).(4)

(*1. Delete remainder of this para, if submission not made. 2. Arguments on submission, answer and reply are recorded per Notes. 3. RP 40 fn 1. See MML p 72 paras 12-14 and p 81 para 42. 4. Delete part not used. If accused acquitted on all charges, use second alternative in para D8.)*

NB : If trial proceeds, accused must be allowed great latitude in making his defence, and the Court should not stop his defence solely on ground of irrelevance. (RP 60(C), 114, 115.)

D5. President to accused : You will now proceed with your defence.(1) You may, if you wish, give evidence yourself on oath as to the facts or your character or both, in which case you will be subject to cross-examination.(2) You may, however, make a statement without being sworn, and you will not be subject to cross-examination.(3) But a statement which could have been made on oath will not carry with the Court the same weight as sworn testimony.(4) You may call witnesses in your defence and as to character, whether you give evidence or make a statement or do neither.

President to accused : Do you wish to give evidence yourself as a witness, make a statement, or do neither ? Ans.....Do you intend to call witnesses on your behalf ? Ans.....Are they witnesses as to character only ? Ans.....

(*1. RP 155. 2. RP 40(A), see 80(D). 3. RP 40 fn 10. 4. RP 40 fns 2, 9.*)

D6. Consequent on the answers recorded in para D5 the appropriate procedure for the defence is followed.(1)

(*1. RP 114, 115, 116. For procedure see Notes on back of Convening Order, CF A95. Evidence for accused as to his character should, if in his interest, be given before the finding. See RP 46(A) fn 1, 86(C). Note the further opportunity in para E1 of Record Form E. Record per Notes addresses, statement, evidence and any summing up by the JA under RP 42, 103(e).*)

D7. The Court is closed to consider the finding(s).(1) The finding(s) of the Court is (are) recorded in Part I of the Schedule.(2) The Court is re-opened.

(*1. RP 43, 117(A). See Notes in Part I of Schedule. 2. RP 44(A).*)

D8. The President announces the finding(s), if any, of Not Guilty, and states to the accused that the finding(s) of the Court on the.....charge(s), being subject to confirmation, will be promulgated later.(1)

Or, The President announces that the accused is found Not Guilty on all charges and is to be released forthwith, and that the proceedings are accordingly terminated. Part I of the Schedule is dated and signed.(2)

(*1. AA 54(3) (6), RP 45, 120(A). 2. AA 54(3), RP 45, 117. This alternative announcement is not applicable when there are pleas of Guilty outstanding and dealt with under Record Form B or C.*)

D9. The accused having been found Guilty on one or more of the charges, the proceedings are concluded by using Record Form E below.

RECORD FORM E—PROCEEDINGS ON CONVICTION BEFORE SENTENCE.

E1. President to accused : Do you wish to give evidence yourself or to call any witnesses as to your character ?(1)

Ans NO SIR

(*1. If evidence has already been given by accused or his witnesses as to his character, delete this para. RP 37(C) fn 4, 46 fn 1. Accused and witnesses are sworn. Evidence recorded per Notes.*)

E2. The Prosecutor produces Statement(s) as to Character and Particulars of Service(1), and certified true copy (copies) of Conduct Sheet(s)(2), purporting to refer to the accused, which he submits to the Defending Offr for examination, and then to the Court for admission in evidence. The Court is satisfied that these documents refer to the accused, because (i) they purport to be signed in the manner required by AA 163(1) (g) (h), and (ii) they purport to refer to (a) soldier(s) having the same number, rank, name and corps as the accused. Admitted in evidence and marked Ex B and Ex C respectively.(3)

(*1. MFB 355 or AFB 296. 2. MFM 6. 3. RP 46, KR Con 558. If above documents not produced, see RP 46 fn 1 para 1.*)

E3. President to accused : Do you wish to address the Court on the Statement(s) and Conduct Sheet(s), and in mitigation of punishment ?(1) Ans Yes sir by my defending officer (2)

(*1. RP 37(C), 46(D). 2. Address, if any, recorded per Notes. Court should permit accused or his witnesses to prove on oath anything here or previously stated which would affect the amount of punishment. RP 37(F) fn 7.*)

E4. The President states that the Court is closed to consider the sentence, and that the sentence to be awarded by the Court, being subject to confirmation, will not be announced, but will be promulgated later, and the proceedings in open court are accordingly terminated.(1)

(*1. AA 54(6), RP 120(A).*)

E5. The Court considers the sentence.(1) The President records the sentence in Part I of the Schedule, which is dated and signed by him and the JA, if any.(2)

(*1. When several accused tried separately see RP 96(b). One sentence only, comprised of the punishment or punishments laid down in AA 41, 44 and its proviso, is to be awarded to cover all charges in all charge sheets on which accused found guilty. RP 46. As to sentences see AA 44, 138, 182, RP 46-50, 69, 118, 119(A), KR Con 308, 330, 563-566, Overseas RO 309, 2322. RP 46. As to sentences assigned for civil offences by the law of England see AA 41(3), MML p 120. When accused MML p 60, 757-759. As to sentences unsigned for civil offences by the law of England see AA 41(3), MML p 120. When accused already under sentence of imprisonment or detention see AA 44(1B), 68(1), KR Con 564. 2. RP 50. As to release from arrest by Confirming Offr see KR Con 567. As to assembly and disposal of record after trial see Notes on back of Convening Order.*)

PRESIDENT OR JA WILL INITIAL ALL DELETIONS AND ALTERATIONS.

C.M.J.

CHARGE SHEET

The accused C-37392 Private Victor Pauvelle, 33 Cdn Corps Trs Comp Coy RCASC, a soldier of the Canadian Army Overseas is charged with;

FIRST CHARGE WHEN ON ACTIVE SERVICE, DISOBEYING A LAWFUL COMMAND
Sec 9(2)A.A. GIVEN BY HIS SUPERIOR OFFICER

in that he

at approx 2000 hrs 17 Nov 44 when ordered by the Duty Corporal to move his kit from the old guard room to the new guard room did not do so.

SECOND CHARGE WHEN ON ACTIVE SERVICE, LEAVING HIS POST WITHOUT
Sec 6(2)(f)A.A. ORDERS FROM HIS SUPERIOR OFFICER

in that he

in the field absented himself from his post from approx 2240 hrs till 2330 hrs 18 Nov 44.

THIRD CHARGE WHEN ON ACTIVE SERVICE, USING INSUBORDINATE LANGUAGE
Sec 8(2)A.A.. TO HIS SUPERIOR OFFICER

in that he

at 1250 hrs 20 Nov 44 when being placed under arrest said to CSM Webb " Some day I get you son-of-a-bitch."

(sgd) G.Walker, Major
Commanding
33 Cdn Corps Tps Coy RCASC

In the Field
21 Nov 44

To be tried by Field General Court-Martial.

29 Nov 44

(sgd) G.D. Ross-Smith, Lt-Col
Comd RCASC 2 Cdn C Tps

G.W.J.

FIELD GENERAL COURT-MARTIAL

(Whether the accused to be tried is under his comd or not, a FGCM may on application to him be convened by any offr of Cdn Army Overseas, or of any other force if authorized in law, in immediate comd of troops on active service, subject to RP 105(C) and restrictions imposed by appropriate authy. AA 49, 50, RP 104-107, 114. As to the duties and privileges of the Convening Offr in dealing with the application see MML Chap V paras 20 and 23, RP 87(B).

There should be a separate Convening Order for each person to be tried separately by the same Court. RP 71(C), 109. As to separate charge sheets see RP 62, and as to separate trial on charges in the same charge sheet see RP 108. As to two or more accused charged jointly see RP 16, 109. As to reasons for showing (a) permanent or confirmed rank, and (b) appmt, A/rank or A/appmt, if any, see AA 182, 183, fns, KR Can 308, 328, 330.)

ACCUSED.

Number.	(a) Prmnt R.	(b) Appmt, A/R or A/Appmt.	Full Christian Names.	Surname.	Unit.
C-37392	Pte		Victor	Fauvelle	33 Cdn C Tps Comp Coy RCASC

CONVENING ORDER.

1. Whereas complaint has been made to me, the undersigned, that the person(s) named above as the accused, being subject to military law, has ~~(have)~~ committed the offence(s) set forth in the Charge Sheet(s) attached and on *(date)* 20 Nov 44 endorsed by me, ~~(or by an offr of my staff for me)~~, " To be tried by Field General Court-Martial ",

2. And whereas I am of opinion that it is not practicable that such offence(s) should be tried by an ordinary General Court-Martial ; ~~(and that it is not practicable to delay the trial for reference to a superior qualified offr.)~~

(Delete part in brackets when not required for compliance with RP 105(C).)

3. I hereby convene a Field General Court-Martial to try the said person(s), and to consist of the Offrs appointed or detailed hereunder.

4. ~~I am unable to appoint (a) three Offrs to form the Court, (b) a Fd Offr as President, for the reasons I have attached hereto.~~

(AA 49, RP 106(B), 107(A). Delete the whole or part, if not applicable.)

5. I also appoint as Judge-Advocate thereat the Offr mentioned hereunder.

(RP 106(E). Delete, if none appointed.)

PRESIDENT.

(Rank.)	(Must be named. RP 106.)	(Unit.)
Major	D.C. Shaw	2 Cdn M/C RCASC

MEMBERS.

(Rank.)	(Named or detailed. RP 106.)	(Unit.)
Capt	R. Church	2 Cdn C Tpt Coy RCASC
Lt	D W Slater	34 Cdn C Tps Comp Coy RCASC

WAITING MEMBER.

(Rank.)	(Named or detailed, if any. RP 106.)	(Unit.)
	N/A	

JUDGE-ADVOCATE.

(Rank.)	(Must be named, if any. RP 106.)	(Unit.)
Capt	G.V. Jermyn	Hq 2 Cdn Corps

On Active Service in the Fd

in Holland (Country.) G.D. Ross-Smith (Signed personally. RP 105 fn 2.) Lt-Col (Rank.)

Date 20 Nov 44 Commanding RCASC 2 Cdn C Tps Convening Officer.

CONVENING OFFR WILL INITIAL ALL DELETIONS AND ALTERATIONS

4/38A CFAAS (To Date of AFA3) 40/P & S/1807 (4931) *(See overleaf for oaths and notes for use on trial.)*

G.H.Q.

MEDICAL OFFICER'S CERTIFICATE

K.R. (Can) Para 557

I certify that I have this morning examined C-17392 Pte Fauvelle, Victor , of 33 Cdn Corps Tps Comp Coy RCASC and in my opinion he is fit to undergo trial by Court-Martial.

Station Wield

Date 2 Dec 44

(sgd) ??????????
Medical Offier

C.H.F.

MEDICAL OFFICER'S CERTIFICATE

K.R. (Can) Para 557

I certify that I have this morning examined C-37302 Pte Fauvelle, Victor , of 33 Cdn Corps Tps Comp Coy RCASC and in my opinion he is fit to undergo trial by Court-Martial.

Station Field

Date 2 Dec 44

(sgd) ??????????
Medical Offier

C.M.J.

STATEMENT IN MITIGATION OF PUNISHMENT PTE. V. FAUVELLEX

While Pte Fauvelle pleads guilty to charges as laid, the defence wishes to bring to the attention of the court the following facts: Previous to leaving England, Fauvelle had been going with a girl for a period of one year. After having been posted to CBRC as reinforcement for overseas, he was told that the girl was going to have a baby. He immediately took steps to try and marry her, and in the meantime sent money regularly to help her out. Due to exigencies of the service, permission to marry could not be granted and Fauvelle was sent to France. The child was born in August. While in France he tried to send her money regularly but the money orders were not available. He contacted the R.C. Padre, Father Dillon in this connection and asked him if he could secure money orders for him, but this was to no avail.
Father Dillon certifies that Fauvelle made this request many times. Pte Fauvelle is prepared to accept his punishment. His only worry is that while he is serving punishment he will not be able to support his proposed wife and child. Fauvelle has the makings of a good soldier and if given proper employment, and a chance to look after his personal affairs, he probably would be found willing and able. He has expressed a willingness to transfer to Infantry if given the chance. All Fauvelles troubles are caused by his worries which are only natural, and the change requested, if granted would undoubtedly bring out the good that is in him.

(sgd) B. McKenty, Lt.
Defending Officer

Summary of evidence in the case of C-37302 Pte Victor Fauvelle, 33 Cdn Corps Troops Comp Coy RCASC, Cdn Army Overseas charged with, disobeying a lawful command, leaving his post without orders, resisting an escort and using insubordinate language.

The Commanding Officer directs that the evidence be taken on oath.

FIRST WITNESS

R-84084 Cpl Niblett O.L. 33 Cdn Corps Tps Comp Coy RCASC, Cdn Army Overseas having been duly sworn states:

I am R-84084 Cpl Niblett O.L 33 Cdn Corps Tps Comp Coy RCASC Cdn Army Overseas. At approx 2000 hrs 17 Nov 44 I proceeded in M Pte Smith to the old Guard Room to pick up Pte Fauvelle's Kit. I met the said soldier coming out of te guard room; whereupon I ordered him to get his kit packed and place it in the vehicle I had with me and to proceed to the new Guard room. ~~I ~~ waited for approx 45 minutes and then entered the guard room . I asked Pte Findlay who was there to tell Pte Fauvelle to get a move on. He reported back and informed me Pte Fauvelle was not there. I repeated the order and insructed Pte Findlay to make another search. He reported back a second time stating Pte Fauvelle was not there I proceeded back to the new guard room in a lorry driven by Pte Smith without Fauvelle's Kit.

At approx 2240 hrs the 1f Nov 44 I was ordered by the Offr Comd to ascertain the whereabouts of the guard on duty at Coy HQ. I patrolled the beat, looked in the billets, at the rear of the buildings and in and around the vehs. I found no trace of the guard. Pte Fauvelle was the guard on duty at this time and I know this as I was Orderly Corporal and had posted him to his duty at 2000 hrs. I reported the absence of Pte Fauvelle to the CSM at 2300 hrs the 1f Nov 44.

Questioned by Officer Taking the Summary.

Q-1 Was Pte Fauvelle posted, instructed to his beat, and did he relieve another picquet?

A-1 Yes, Sir. He relieved another picquet. I told him w en I posted the piquet in the first instance as to his beat and had not changed the beat. No other Offr or N.C.O. had given permission for Pte Fauvelle to leave his post.

Q-2 How was Pte Fauvelle posted as guard?

A-2 He was told by me on the 12 Nov 44 when he commended a weeks tour of guard duty that he was to be a guard f r a period of one week, to be properly dressed at all times and other normal guard duties. He was instructed by me that his post was from the kitchen to the HQ's Orderly Room which included several stocks of Compo packs. He was to be responsible for t Compo packs while on duty and to challenge and question all persons unknown to him that transgressed his post. He was instructed he would be four hour on duty and eight hours off commencing at 2000 hrs 12 Nov 44. The changing of sentries was automatic from then on.

Q-3 Was the beat changed by any N.C.O. in your presence after you had instructed the guard on the 12 Nov 44?

A-3 Yes Sir, by Sgt Scott on th 1f Nov 44 at approx 1830 hrs.

Q-4 Was Pte Fauvelle present when Sgt Scott ordered the change of beat?

A-4 Yes Sir, he was.

(sgd) O.L. Niblett

SECOND WITNESS

B-83802 Sgt Scott, R.C. 33 Cdn Corps Tps Comp Coy RCASC, Cdn Army Overseas having been duly sworn states:

I am B-83802 Sgt Scott, R.C. 33 Cdn Corps Tps Comp Coy RCASC, Cdn Army Overseas. I was present when Pte Fauvelle was posted as guard at 2000 hrs on the 12 Nov 44. He was ordered to patrol an area from Coy HQ to the kitchen which included several stacks of Compo packs. At 1830 hrs on the 16 Nov 44 I had occasion to change thpost of the Coy HQ guard as th Coy HQ had been moved that day. At the time stated I instructed all the guards incl Pte Fauvelle that the post for which they would be responsible would be immediately in from t of the HQ office Lorry. I posted the guard Pte Caunce at 1830 hrs and he was relieved by Pte Fauvelle at 2000 hrs. There was no other change of beat during this guards tour of duty.

Questioned by the accused.

Q-1 Did you instruct me personally and where as to this change of beat?

A-1 I instructed you in the house adjoining the guard room at 1830 hrs on 16 Nov 44.

Questioned by Officer taking summary

Q-1 Who other than the guard was present where you ordered the change of beat?

A-1 Cpl Niblett, Sir.

(sgd) R.C. Scott

THIRD WITNESS

B-84387 Pte Smith W.E. 33 Cdn Corps Tps Comp Coy RCASC, having been duly sworn states:

I am B-84387 Pte Smith W.E. 33 Cdn Corps Tps Comp Coy RCASC Cdn Army Overseas. On the 17 Nov 44 at approx 2000 hrs I drove Cpl Niblett in my lorry to the old guard room to pick up a guard and his kit. In my presence Cpl Niblett ordered a soldier to pick up his kit and place it on the lorry. Cpl niblett entered the guard room and returned in about ten minutes, I drove Cpl Niblett back to Coy HQ.

The accused declines to cross examine this witness.

(sgd) W.E. Smith

FOURTH WITNESS

B-83872 CSM Neth J.T. 33 Cdn Corps Tps Comp Coy RCASC, having been duly sworn states;

I am B-83872 CSM Neth J.T. 33 Cdn Corps Tps Comp Coy RCASC, Cdn Army Overseas. On 18 Nov 44 at approx 2300 hrs I was awakened by the Offr Comd and the Duty Corporal and told that the Coy HQ piquet was not on duty at his piquet. I made a thorough search of the guards post and immediate area and could not find the guard. At approx 2330 hrs Pte Fauvelle walked down the street to Coy HQ where I was standing I recognized him as the guard on duty. I asked him where he had been and he replied "on the street." I warned him and placed under open arrest and told him charges would be preferred.

On the 20 Nov 44 at approx 1250 hrs in the course of duty I placed Pte Fauvelle under close arrest. I ordered L/Cpl Ferri to escort him to the guard room. Pte Fauvelle turned about and walked away. I ordered Pte Smith C.A. to assist L/Cpl Ferri to take Pte Fauvelle into arrest. Pte Smith and L/Cpl Ferri took hold of Pte Fauvelle by the arms, he shrugged the escort off and said looking straight at me, "I see you some day son-of-a-bitch." He turned walked away and the escort went after him and talked to Fauvelle and took Fauvelle to the Guard room.

Questioned by the accused;

Q-1 The statement you claimed I made, " I get you some day son-of-a-bitch" are these my exact words?

A1 Yes, definitely.

Signature of Witness

FIFTH WITNESS

F-83864 L/Cpl Ferri N. 33 Cdn Corps Tps Comp Coy RCASC, Cdn Army Overseas having been duly sworn states;

I am F-83864 L/Cpl Ferri N. 33 Cdn Corps Tps Comp Coy RCASC, Cdn Army Overseas. On the 20 Nov 44 at approx 1250 hrs the CSM ordered me to put Pte Fauvelle, the accused, whom I now recognize under close arrest. I proceeded to carry out this order but Pte Fauvelle refused and said, " No I will not go in the guard room " and walked away. The CSM called two guard and ordered him to assist me. Pte Fauvelle shoved away from us and walked down the road. We turned, faced the CSM and said " I will get you son-of-a-bitch, and walked on down the street. Pte Smith and I went after him, talked to him and escorted him to the guard room.

The accused declines to cross examine this witness.

(sgd) N. Ferri, L/Cpl

SIXTH WITNESS

W-51057 Pte Smith G.A. 33 Cdn Corps Tps Comp Coy RCASC, Cdn Army Overseas having been duly sworn states;

I am W-51057 Pte Smith G.A. 33 Cdn Corps Tps Comp Coy RCASC, On the 20 Nov 44 at approx 1250 hrs I was on guard at Coy HQ. The CSM ordered me to assist L/Cpl Ferri in placing the accused Pte Fauvelle whom I now recognize under arrest. L/Cpl Ferri and myself took Pte Fauvelle by the arms and he shrugged away from us. The CSM was standing in front of us and Pte Fauvelle faced the CSM and said, " I'll get even with you you son-of-a-bitch " or words to that effect. He then walked down the road. We walked up to him and persuaded him to come back to the guard room which he did.

The accused declines to cross examine this witness.

(sgd) G.A. Smith

The accused was warned as follows:

"Do you wish to make any statement or to give evidence on oath? You are not obliged to say anything or give evidence unless you wish to do so, but whatever you say or any evidence you give will be taken down in writing, and may be given in evidence."

The accused; I have nothing to say at this time.

(sgd) W.Farvelle

I certify that R.P. 4 have been complied with.

Taken by me in the Field in the presence and hearing of the Accused, this twenty first day of November 1944.

(sgd) C.Wishing, Capt
Officer taking Summary

I desire that the Officer Commanding appoint an Officer to defend me at my forthcoming trial by D.C.C.M.

Signature of Accused

Exh "I" C.W.J.

M.F.B. 355
22M—5-41 (572-3)
H.Q. 1772-39-620
A.F.B. 296

STATEMENT AS TO CHARACTER AND PARTICULARS OF SERVICE OF ACCUSED

Number	Rank	Name	Regiment (or unit)
C-37302	Pte	Fawville, V.	33 Can Corps Tk Coy RCASC

1. The following is a fair and true summary of the entries in the Service and General / Regimental and Squadron, Battery Conduct sheets / or Company Conduct sheets of the accused, exclusive of convictions by a Court-Martial or a Civil Court, of summary awards under Section 47 of the Air Force Act / Army Act and of cases in which trial has been dispensed with.

	Within last 12 months	Since enlistment or appointment
For AWL Sec 15(1)	two times	eight times
For Negligent driving Sec 40	times	Two times
For Breaking Barracks Sec10(4)	times	One times
For Conduct Sec 40	times	Three times
For Escaping Sec 22		One

~~Number of instances of gallantry or distinguished conduct~~

or,

~~There are no entries in the conduct sheets of the accused.~~

NOTE.—If the charge is for drunkenness, the entries for drunkenness must be stated separately.

2. ~~The accused has not been previously convicted~~

or,

Previous convictions of the accused by a court-martial or a civil court, of summary awards under Section 47 of the Air Force Act / Army Act and dispensations with trial under A.F.A. 73 / A.A. 73 are set out in the Schedule annexed to this statement.

3. The accused is not under sentence at the present time.

or,

~~The accused at the present time is under sentence for [illegible] beginning on the [illegible] day of [illegible]~~

4. The accused has been in confinement awaiting trial on the present charges, for NIL days in civil custody, and 12 days in military / Air Force custody, making a total of 12 days in custody, of which NIL days were spent in hospital.

5. The present age of the accused according to his record of service is / attestation paper is 27 Years

6. The date of his ~~commission~~ / attestation specified in his record of service is / attestation paper is 13 Mar 41

7. The service which the accused is allowed to reckon towards discharge is

8. The accused is entitled to reckon 3y s7mos service for the purpose of determining his pension, etc.

9. The accused is in possession of or entitled to no air force / military decoration, or air force / military reward (or is in possession of or entitled to). State any air force / military decoration or reward.

C.V.S.M. and Clasp

10. (If the accused is a warrant officer.) The accused before he was made a warrant officer last held ~~His Majesty's~~ / Air Force ~~Commission~~ the regimental rank of

Exh "B" C.M.J

M.F.B. 355
22M—5-41 (572-3)
H.Q. 1772-30-620
A.F.B. 296

STATEMENT AS TO CHARACTER AND PARTICULARS OF SERVICE OF ACCUSED

Number	Rank	Name	Regiment (or unit)
C-37302	Pte	Fauvelle, V.	33 Cdn Corps Tk Comp Coy RCASC

1. The following is a fair and true summary of the entries in the Service and General Conduct sheets / Regimental and Squadron, Battery or Company Conduct sheets of the accused, exclusive of convictions by a Court-Martial or a Civil Court, of summary awards under Section 47 of the Air Force Act / Army Act and of cases in which trial has been dispensed with.

	Within last 12 months	Since enlistment or appointment
For AWL Sec 15(1)	two times	eight times
For Negligent driving Sec 40	times	Two times
For Breaking Barracks Sec10(4)	times	One times
For Conduct Sec 40	times	Three times
For Wearing Sec 22	times	One

~~Number of instances of gallantry or distinguished conduct~~

or,

~~There are no entries in the conduct sheets of the accused~~

NOTE.—If the charge is for drunkenness, the entries for drunkenness must be stated separately.

2. ~~The accused has not been previously convicted~~

or,

Previous convictions of the accused by a court-martial or a civil court, of summary awards under Section 47 of the Air Force Act / Army Act and dispensations with trial under A.F.A. 73 / A.A. 73 are set out in the Schedule annexed to this statement.

3. The accused is not under sentence at the present time.

or,

~~The accused at the present time is under sentence for XXXXXXXXX beginning on the XX day of XXXXXXXXXX~~

4. The accused has been in confinement awaiting trial on the present charges, for NIL days in civil custody, and 12 days in military / Air Force custody, making a total of 12 days in custody, of which NIL days were spent in hospital.

5. The present age of the accused according to his record of service is 27 Years / attestation paper is

6. The date of his ~~attestation~~ / enlistment specified in his ~~record of service~~ / attestation paper is 13 Mar 41

7. The service which the accused is allowed to reckon towards discharge is

8. The accused is entitled to reckon 3y 87mos service for the purpose of determining his pension, etc.

9. The accused is in possession of or entitled to no air force / military decoration, or air force / military reward (or is in possession of or entitled to). State any air force / military decoration or reward. C.V.S.M. and Clasp

10. (If the accused is a warrant officer.) The accused before he was made a warrant officer last held ~~his Air Force~~ the regimental rank of

11. (In the case of an officer.) The accused holds in the Royal Canadian Air Force the rank of ..... Permanent Force unit ..... dated ..... and in his regiment (or corps), the rank of ..... dated .....

12. The accused has served as a non-commissioned officer continuously, without reduction, to the present date. ..... Date of promotion.

In the rank of ..... years.

In the rank of ..... years.

In the rank of ..... years.

NOTE.—If any matter in any of the above paragraphs cannot be stated from the Regimental books, the paragraph must be struck through.

SCHEDULE

Of convictions by a court-martial or civil court, of summary awards under Section 47 of the Army Air Force Act, and of cases in which trial has been dispensed with of accused, Number C-37392 Rank Pte Name Fauvelle, V. of 33 OCTCC RCASC Unit Regiment

NOTE.—A verbatim extract from the regimental books stating these convictions and dispensations with trial must be inserted.

Description of Court by which tried	Date and Place of Trial	Charge upon which convicted	Sentence of the Court	Punishment Remitted
P G C M	24 Feb 1943 Field	(1)AA Sec 15(1) (2)AA Sec 15(1) (3)AA Sec 40 (4)AA Sec 40 (5)AA Sec 40 (6)AA Sec 15(1) (7)AA Sec 22 (8)AA Sec 15(1)	60 Days Detention	

I hereby certify that the foregoing schedule of convictions and dispensations with trial is a true extract from the regimental books in my custody.

Signed this 2nd day of December 1944 (sgd) E.Wiebing,Capt
Adjt 33 Cdn Corps Tps
RCASC

The above statement (with the schedule of convictions and of cases in which trial has been dispensed with) is read, marked ..... signed by the president, and annexed to the proceedings.

(sgd) D.C. Shaw, Major

3/17 MFM 6
(AFB 122)
40/P&S/136 (5413)

No. 37382 Name Fauvelle, W. | Sqn, Battery, or Company | Corps RCASC | Date of enlistment 13 Mar 41 | GC Badges | Service or Proficiency Pay | Character

Date of last entry in Company Conduct Sheet | No. and date of last drunk | Period not reckoning towards freedom from extra fine | Sheet No | Signature OC Company, etc

Place	Date of offence	Rank	Cases of drunkenness	OFFENCE	Names of Witnesses	Punishment awarded	Date of award or of order dispensing with trial	By whom awarded	Remarks
In accordance with CRO 310 previous sheet destroyed on completion of six months service from date of attestation 13 Sep 41. Cases of Drunkeness NIL									
Field	30 Nov	Pte		AA Sec 15(1) AWL 2 days 21 hrs 16 mins (app by Prov)	Documentary (Prov)	7 days Pay 60 days Detn	7 Dec 42 24 Feb 43	Lt Col Bennick FOCM	Forf 3 days pay 60 days Pay
Field	26 Dec	Pte		(1) AA Sec 15(1) AWL 1 day 8 hrs					22 days Pay
	3 Jan			(2) AA Sec 15(1) AWL 6 days 30 mins					34 days Pay
	3 Jan			(3) AA Sec 40 Conduct False Pass					
	3 Jan			(4) AA Sec 40 Giving False Information to Provost					
	3 Jan			(5) AA Sec 40 Conduct Imp using A/Cas Expt					
	12 Jan			(6) AA Sec 15(1) AWL 6 days 5 hrs 15 mins					
	16 Jan			(7) AA Sec 22 Whilst in confinement escaping					
	6 Feb			(8) AA Sec 15(1) AWL 5 days 14 hrs 30 mins					

(PTO)

Place	Date of offence	Rank	Cases of drunkenness	OFFENCE	Names of Witnesses	Punishment awarded	Date of award or of order dispensing with trial	By whom awarded	Remarks
Field	20Apr	Pte		AA Sec 40 Neglect - Negligence driving a CAV	Capt W.G. Beamish	8 days pay	21Apr43	Major J. FitzRandolph	
Field	20May	Pte		AA Sec 40 Neglect - Negligent driving a CAV	A/S/Sgt Sheffield L	3 days C.B.	21 May43	Major J. FitzRandolph	
Field	29May	Pte		AA Sec 15(1) AWL 4 hrs	Sgt Hamilton	14 dys CB	1 Jun43	Major J. FitzRandolph	
Field	5Nov	Pte		(1) AA Sec 15(1) AWL 2 days 1 hr	CSM Gardiner Sgt Adair	14 dys pay 14 dys C.B.	8Nov 43	Major D.A. Ferguson	Auto Forf Pay
				(2) AA Sec 10(4) Breaking Barracks					
				"Awarded Canadian Volunteer Service Medal and Clasp DO 4 d/21 Jan 44"					
Field	14Aug	Pte		AA Sec 15(1) AWL 7 hrs	S/Sgt Munson L/Cpl Hunter	28 dys pay	18Aug44	Major W.H. Hefferman	1 days pay FR&I 149 (2)

No. 37392 Name Fauvelle, V. | Sqn, Battery, or Company | Corps RCASC | Date of enlistment 13 Mar 41 | GC Badges | Service or Proficiency Pay | 3/17 MFM'6 (AFB 122) 40/P&S/136 (5413)

Date of last entry in Company Conduct Sheet | No. and date of last drunk | Period not reckoning towards freedom from extra fine | Sheet No | Signature OC Company, etc | Character

Place	Date of offence	Rank	Cases of drunkenness	OFFENCE	Names of Witnesses	Punishment awarded	Date of award or of order dispensing with trial	By whom awarded	Remarks
Field	28 Sep	Pte		AA Sec 15(1) AWL TTA 6 hrs 15 mins	Cpl Conroy RC Cpl Gaitzler E.F.	28 days FP 28 days pay	2 Oct 44	Major W. Heffernan	a/Ecrf of 1 days pay FRI 149(1)(a)
				Certified true copy from the Regimental Rocks in my custody. (sgd) E. Wishing, Capt & Adjt.					

(PTO)

I desire the services of an Officer to defend me at my forthcoming trial by FGCM

(sgd) V. Pauvelle.

Certified true copy of original statement, held by the Officer having custody of the Regimental documents.

(sgd) E. Wishing, Capt.,
Adjutant 33 Cdn Corps Tps Coy
RCASC

H.Q.C. 55-F-864

CONFIDENTIAL

DEPARTMENT OF NATIONAL DEFENCE OTTAWA, CANADA

SUBJECT

FIELD GENERAL COURT-MARTIAL

FAUTEUX, RAOUL D-62390 PTE

CENTRAL REGISTRY	DATE	R.A. OR R.P.	INITIALS	REFERRED TO	FOR	INITIALS	DATE
							2-12-46

CONFIDENTIAL
H.Q.C. 55-F-864

OVERSEAS COMBINED

NOTICE

1. This should be retained no longer than absolutely necessary. If a file is frequently needed at short intervals, it is better to B.F. it for two or three days than keep it out of Central Registry indefinitely. This ensures it being completed and kept in order, and also gives other officers an opportunity to use same.
2. Central Registry should be notified whenever a file is passed direct to another branch.
3. Officers going overseas should turn their official files in to Registry.

PASS THIS FILE IN ENVELOPE

SCHEDULE.

PART I. PLEA(S), FINDING(S) AND SENTENCE.

Accused: D-62390 Pte Raoul Fauteux R22R

Charge. (Insert "alternative" where applicable.)	Plea. (See instrs p 2.)	Finding. (See note below.)	(Space for use as required for further charges, accused charged jointly, special findings, etc.)
1st A.A. Sec 12 (b)	Not guilty		The Court find D-62390 Pte Raoul Fauteux Not guilty of desertion, but guilty of A.W.L. for the time stated.
2nd			
3rd			
4th			
5th			
6th			

(Note: As to findings for lesser offences see AA 56, RP 44; findings on alternative charges see MML p 483 fn 4 para 2, RP 44; special findings see RP 44 and MML p 753, and in loss of kit see RP 44 fn 6.)

~~At present~~ under sentence for ..... beginning on (date) ..... (1) J.K.R.

(1. Insert sentence being served, or delete, if not applicable. See RP 46(A). Information should be found on MF B355 or AF B296.)

Time in confinement awaiting present trial—a total of 15 days, of which Nil days were spent in hospital.(1)

(1. See RP 46(A) fn 2. Information should be found on MF B355 or AF B296 admitted in evidence under E2.)

Sentence Awarded by the Court:

To undergo detention for a period of ninety (90) days

(Sgd) ..... Judge-Advocate, if any. 12 Oct 44 Date awarded. (Sgd) J.K. Rhoden Major President. (RP 45, 50.)

(See back of Convening Order as to assembly and disposal of record after trial.)

PART II. MINUTE WHERE CONFIRMATION RESERVED. (AA 54(5), RP 120(F), MML p 760.)

Date ..... (Sgd) ..... Commanding .....

PART III. DECISION OF CONFIRMING OFFR ON FINDING(S) AND SENTENCE.

(For duties and powers see AA 54, 57, RP 27(D) fn 6, 46(A), 51-56, 120, MML pp 759-761, KR Con 567-577. Acquittals require no confirmation and cannot be revised: AA 54(3). Sending back finding or sentence for revision by Court: AA 54(2), RP 120(G). If not confirmed, accused may be tried again: AA 157, MML p 64. Minute of confirmation or non-confirmation may be altered before promulgation: RP 53, MML p 65. Quashing after promulgation: KR Con 573. Duties and powers of reviewing offrs: AA 57, 57A, RP 53A, 54. The Confirming Offr must sign here personally. AA 172 fn 1.)

My decision on the finding(s) and sentence set forth in Part I is:

Finding and sentence confirmed

~~I direct that the accused be not committed to prison or detention barracks until further orders.~~(1) J.K.R.

(1. AA 57A. Delete if not used.)

Date 17 October 44 (Sgd) E Bernatchez Brigadier Commanding 3 Cdn Inf Bde Confirming Officer.

PART IV. PROMULGATED AND EXTRACTS TAKEN. (RP 53, KR Con 576, 577.)

Accused.	Date.	Signature of Offr.
D62390 Pte R Fauteux R22R	18 Oct 44	Lt Paymaster for Regt'l 22 R

ALL DELETIONS AND ALTERATIONS WILL BE INITIALLED.

RECORDED AT CMHQ IN AB 160. 48-45

CFA96 (In lieu of AFA31) 40/P & S/1698 (40000) 4/38B

FIELD GENERAL COURT-MARTIAL

Convened by Order of Brigadier J.P.E. Bernatchez Comd 3 Cdn Inf Bde dated 11 Oct '44

REGIMENTAL NO. 62390 RANK PTE NAME FAUTEUX R.R.C.H.C.

ACCUSED.

(As to the trial of two or more charged jointly see RP 16, 71, 109. As to reasons for showing (a) permanent or confirmed rank, and (b) apprnt, A/rank or A/appmt, if any, see AA 182, 183, fns, KR Con 308, 328, 330.)

Number.	(a) Prmnt R.	(b) Appmt, A/R or A/Appmt.	Full Christian Names.	Surname.	Unit.
D-62390	Pte		Raoul	Fauteux	R22R

PROCEEDINGS REVIEWED 29 NOV 44 J.A.C. W.C. Sutton Capt

PROCEEDINGS OF TRIAL.

REVIEWING OFFICER, JAG ~~ETO~~ CMHQ on (date(s)) 12 Oct 1944 J.K.R.

Held in this Fd in (country) ~~of~~ CANADA at 3 Cdn Inf Bde Sig Sqn 2 C 86

RECORD FORM A—OPENING PROCEEDINGS AND ARRAIGNMENT.

A1. The President, Members, ~~waiting Member, JA, if any, and Offrs under instr, if any~~, assemble, and the Court is closed. J.K.R.

(PRINTED MATTER, NOT IN ITALICS FOR GUIDANCE, WILL BE DELETED, IF NOT USED OR APPLICABLE, AND INITIALLED BY PRES OR JA. The Schedule referred to throughout is on p 4. Citations do NOT include all relevant fmn ROs. For guidance on procedure when a variation in this form arises, see form for GCM in MML pp 741 to 759. A brief record of such variation will be made and given a number having reference to appropriate or preceding para number herein. See back of Convening Order, CF A95, for oaths and instrs on how to record addresses, evidence, etc, which instrs are hereafter called "Notes". As to general provisions for conducting the trial see AA 53, RP 56, 63-70, 73, 74, 94, 103, 119, 132.)

A2. The President initials and lays before the Court the Convening Order and Charge Sheet(~~s~~) attached thereto.(1) J.K.R. The Court is satisfied that it is properly convened and constituted(2), accused is ~~are~~ amenable to military law, and J.K.R. each charge discloses an offence.(3)

(1. As to use of Summary of Evidence see RP 17 fn 6. 2. AA 49, 50, RP 105-107. 3. RP 11-13, 23, 24.)

A3. The Court is opened. The accused is ~~are~~ brought before the Court. At 1345 hours trial commences.

A4. The Prosecutor produces a Medical Certificate that accused is ~~are~~ fit to undergo trial by court-martial.(1) J.K.R. ~~The Prosecutor informs the Court that accused elected to be tried by court-martial instead of being dealt with summarily by the CO.~~(2)

(1. KR Con 557. 2. AA 46(8), RP 60 fn 1. For effect see KR Con 563(c). Delete, if not applicable.)

A5. President to accused: Do you object to F-4201 Pte Montpetit as interpreter? Ans No

The Interpreter is sworn.(1) ~~Do you object to~~ as shorthand writer? Ans J.K.R.

~~The shorthand writer is sworn.~~(1)

(1. RP 72. Delete, if none employed.)

A6. The Convening Order and names of the President and Members of the Court are read to the accused.(1) President to accused: Do you object to be tried by me as President or by any of the Members of the Court?

Ans No (2)

(1. RP 110. 2. If no objection, waiting member retires. RP 68(8). If objection, see procedure AA 51, RP 25, 71, 18, MML p 742.)

A7. The President, Members, ~~JA, if any, and Offrs under instr, if any,~~ are sworn.(1) The following are the ranks, names and units of the offrs comprising the Court, etc: J.K.R.

President	Major	J.K. Rhoden	Asst. N.S.O.
Member	Capt	C.R. Segee	CYR
Member	Lieut	L. Desautels	R22R
Judge-Advocate			
Prosecutor	Lieut	L. Jobin	R22R
Defending Offr	Lieut	J.A. Ouellet	R22R

Questions by President: Is the Prosecutor a lawyer? Ans No Is the Defending Offr a lawyer? Ans No (2)

(1. RP 26, 27, 169, 111. List of offrs under instr will be returned separately with proceedings for information of Conv Offr.)
(2. If Pros a lawyer and Def Offr not, accused is entitled to an adjournment when RP 89 (8) and fn 2 were not followed. See Dir p 3.)

A8. The accused D-62390 Pte Raoul Fauteux before arraignment make(s) (no) ~~or~~ plea(s) J.K.R.(1)

(1. If a special plea is made for separate trial on one or more charges (RP 62(E), 108), or as to the jurisdiction of the Court (RP 34, 35(A), 113), or in bar of trial (RP 36), or as to accused's mental fitness to stand trial (AA 130, RP 57), or by one of several accused charged jointly to be tried separately (RP 16, 71), such plea, the addresses made in support or against, the evidence, if any, and finding are recorded per Notes. For forms of record see references in fns to RsP cited. Insert in AB rank and name of the accused making the plea.)

A9. The accused is (~~are~~) arraigned (~~separately~~) on all charges in the charge sheet.(1) The accused does (~~do~~) not object to any charge.(2) There is no amendment to be made to the Charge Sheet.(3) The President records the pleas in Part I of the Schedule. J.K.R.

(1. RP 31, 1'2. See para 1 of Instrs p 2. When more than one Charge Sheet see RP 62; when several accused to be tried separately see RP 71(C), and use separate copies of CF A96 to record proceedings. 2. RP 32, RP 33. If otherwise, delete and make appropriate record per Notes.)

A10. The Court (is closed and) considers the Instrs on Procedure after Arraignment at top of p 2. The proceedings are continued on Record Form 2

PRESIDENT OR JA WILL INITIAL ALL DELETIONS AND ALTERATIONS.

H/15

INSTRUCTIONS ON PROCEDURE AFTER ARRAIGNMENT.

1. *The accused may not plead or be found Guilty on more than one of two or more charges laid in the alternative. (RP 37(A).) As to withdrawal of alternative charges by Prosecutor see RP 35(C). No other charge can be withdrawn for any reason without authy from Convening Offr. If Convening Offr concurs, Court may accept plea of Guilty to lesser, etc, offence. (RP 44(H).) Accused may change a plea of Not Guilty to Guilty during trial. (RP 38.) As to refusing to plead or not pleading intelligibly see RP 35(A). As to plea when sentence may be death see RP 35(D).*

2. *The proceedings on each charge sheet (RP 62) after arraignment will be conducted as follows in the respective circumstances stated :*

I. If pleas to all charges are GUILTY, use Record Form B below.

II. If pleas to all charges are NOT GUILTY, use Record Form D on p 3.

III. If pleas to some charges are GUILTY and to other charges are NOT GUILTY and,

(a) Such mixed pleas occur when there are no alternative charges in the Charge Sheet, use Record Form C below. (RP 37(A).)

(b) Such mixed pleas occur in a set of two or more charges laid in the alternative, see RP 37 (A) and fn 2 as to discretion of Court, (i) to try the accused on all such alternative charges as if he had pleaded Not Guilty thereto, or, (ii) to record the pleas as the findings of Court. After deciding between (i) and (ii), Court will proceed under foregoing instrs as may be appropriate to result of its decision. See MML p 744 Instrs (2).

3. *As to responsibility of President to accused see RP 59, 60(C); powers and duties of JA see RP 103; duty of Prosecutor see RP 60(A) (B); duty and privileges of accused and Defending Offr see RP 60(C), 87(C), 91, 92; swearing and withdrawal of witnesses from Court see RP 81, 82; questioning of accused see RP 80, 87(C), 92(B), and of witnesses see RP 83-85; calling or re-calling of witnesses by Court, etc, see RP 75-79, 86, 116; use of Summary of Evidence at Trial see RP 17(E) fn 6; and responsibility of JA or Pres to record proceedings see RP 94, 96.*

RECORD FORM B—PROCEEDINGS ON PLEAS OF GUILTY TO ALL CHARGES.

B1. The President or JA, if any, complies with RP 35(B) by explaining to the accused the nature and meaning of the charge(s)(1), and that on his plea of Guilty there will be no regular trial but merely a consideration of the sentence to be awarded after he has been given an opportunity to make a statement in reference to the charge(s), call witnesses as to character and make an address in mitigation of punishment.(2)
(1. RP 35 fn 3. 2. MML p 54 para 47.)

B2. President to accused : The Court will now receive any statement you desire to make in reference to the charge(s).(1) If it appears from your statement that there are circumstances which indicate that you do not understand the effect of the plea of Guilty(2), or which show provocation or extenuation in respect of which in your interest the witnesses for the Prosecution should be examined(2), we shall advise you to change your plea to Not Guilty. In making a statement you will not be sworn or subject to cross-examination ; and anything you say will not be used in evidence against you after you change your plea. If, however, it appears to the Court that your statement affects only the amount of punishment to which you are liable, you will not be advised to change your plea and you will be given an opportunity later to prove your statement by sworn testimony, if you so desire.(4)

President to accused : Do you wish to make a statement ? Ans.....(5)
(1. RP 37(B). 2. RP 37(D) fn 6. 3. RP 35(B), fn 5 para 3, MML p 54 para 47. 4. See para E3 of Record Form E. 5. Statement, if any, recorded per Notes.)

B3. The Court considers the accused's statement.(1) The Court decides (not) to advise accused to change his (their) plea(s) of Guilty to Not Guilty on.....charge(s). The accused is (are) so informed, and he (they) change(s) his (their) plea(s) on.....charge(s). Part I of the Schedule is amended accordingly.
(1. Court may be closed to consider the statement. Delete whole or part not used.)

B4. On the charge(s) to which the plea(s) of Guilty is (are) not changed the President records finding(s) of Guilty in Part I of the Schedule.(1)
(1. RP 35(B). If any plea(s) is (are) changed, use Record Form C or D as appropriate.)

B5. The Summary of Evidence is marked Ex....., initialled and read aloud by the President.(1)
(1. If there is no Summary, or if it is inadequate, comply with RP 37(B). If there is any evidence inconsistent with any plea standing as Guilty, Court will advise accused to change such plea and, if changed to Not Guilty, try such charge(s) by use of paras D1 to D8 inclusive of Record Form D on p 3. RP 37(D).)

B6. The accused having been found Guilty on one or more of the charges, the proceedings are concluded by using Record Form E on p 3.

RECORD FORM C—PROCEEDINGS ON MIXED PLEAS OF GUILTY AND NOT GUILTY.

C1. As to the charges on which accused pleaded NOT GUILTY the trial is continued by using paras D1 to D8 inclusive of Record Form D on p 3 before proceeding with C 2.(1)
(1. RP 37(A) (E).)

C2. The charges on which accused pleaded GUILTY are read to him (them) again, and the trial is continued by using paras B1 to B5 of Record Form B above.(1)
(1. Under B5 such parts only of the Summary of Evidence are read as relate to the charges dealt with under C2. If any plea is changed to Not Guilty, trial thereon proceeds by complying with paras D1 to D8 inclusive in Record Form D on p 3 and making an appropriate record thereof on a separate sheet.)

C3. The accused having been found Guilty on one or more of the charges, the proceedings are concluded by using Record Form E on p 3.

PRESIDENT OR JA WILL INITIAL ALL DELETIONS AND ALTERATIONS.

Pin here Loose Sheets of Record.

RECORD FORM D—PROCEEDINGS ON PLEAS OF NOT GUILTY TO ALL CHARGES.

D1. President to accused : Do you wish to apply for an adjournment on the ground that any of the rules relating to procedure before trial have not been complied with, and that you have been prejudiced thereby, or on the ground that you have not had sufficient opportunity to prepare your defence ? Ans. NO (1)
(1. If "yes", see RP 39(A) for procedure. Statement or evidence, if any, is recorded per Notes.)

D2. The Prosecutor makes ~~(an)~~ (no) opening address.(1) J.K.R.
(1. RP 39(B), 60(A) (B), 90, 92(C) (D). Record address per Notes, subject to RP 95(C).)

D3. The evidence for the Prosecution is taken.(1)
(1. RP 39(C), 114, KR Can 535. Record evidence per Notes. As to Prosecutor giving evidence himself see RP 39(D) (E).)

D4. The Prosecution is closed.(1) ~~The Defending Offr submits that the evidence for the Prosecution does not establish a prima facie case against the accused on the.....charge(s).(2) The Court is closed, and considers the submission.(3)~~ The Court is re-opened, and the President announces that the submission is disallowed on the.....charge(s), and allowed on the.....charge(s), and that, accordingly, the trial will proceed on the former, but the accused is (are) found Not Guilty on the latter charge(s).(4) J.K.R.
(1. Delete remainder of this para, if submission not made. 2. Arguments on submission, answer and reply are recorded per Notes. 3. RP 40 fn 1. See MML p 72 paras 12-14 and p 81 para 42. 4. Delete part not used. If accused acquitted on all charges use second alternative in para D8.)
NB : If trial proceeds, accused must be allowed great latitude in making his defence, and the Court should not stop his defence solely on ground of irrelevance. (RP 60(C), 114, 115.)

D5. President to accused : You will now proceed with your defence.(1) You may, if you wish, give evidence yourself on oath as to the facts or your character or both, in which case you will be subject to cross-examination.(2) You may, however, make a statement without being sworn, and you will not be subject to cross-examination.(3) But a statement which could have been made on oath will not carry with the Court the same weight as sworn testimony.(4) You may call witnesses in your defence and as to character, whether you give evidence or make a statement or do neither.

President to accused : Do you wish to give evidence yourself as a witness, make a statement, or do neither ? Ans. Evidence on oath. Do you intend to call witnesses on your behalf ? Ans. NO. Are they witnesses as to character only ? Ans..... J.K.R.
(1. RP 115. 2. RP 40(A), see 80(D). 3. RP 40 fn 10. 4. RP 40 fns 2, 9.)

D6. Consequent on the answers recorded in para D5 the appropriate procedure for the defence is followed.(1)
(1. RP 114, 115, 116. For procedure see Notes on back of Convening Order, CF A95. Evidence for accused cs to his character should, if in his interest, be given before the finding. See RP 46(A) fn 1, 86(C). Note the further opportunity in para E1 of Record Form E. Record per Notes addresses, statement, evidence and any summing up by the JA under RP 42, 103(e).)

D7. The Court is closed to consider the finding(s).(1) The finding(s) of the Court is ~~(are)~~ recorded in Part I of the Schedule.(2) The Court is re-opened. J.K.R.
(1. RP 43, 117(A). See Notes in Part I of Schedule. 2. RP 44(A).)

D8. The President ~~announces the finding(s), if any, of Not Guilty, and states to the accused that the finding(s) of the Court on the~~ First charge(s) being subject to confirmation, will be promulgated later.(1) J.K.R.
~~Or, The President announces that the accused is found Not Guilty on all charges and is to be released forthwith, and that the proceedings are accordingly terminated. Part I of the Schedule is dated and signed.(2)~~ J.K.R.
(1. AA 54(3) (6), RP 45, 120(A). 2. AA 54(3), RP 45, 117. This alternative announcement is not applicable when there are pleas of Guilty outstanding and dealt with under Record Form B or C.)

D9. The accused having been found Guilty on one or more of the charges, the proceedings are concluded by using Record Form E below.

RECORD FORM E—PROCEEDINGS ON CONVICTION BEFORE SENTENCE.

~~E1. President to accused : Do you wish to give evidence yourself or to call any witnesses as to your character ?(1)~~
Ans. NO. (UNDUE DELETION OF E1) J.K.R.
(1. If evidence has already been given by accused or his witnesses as to his character, delete this para. RP 37(C) fn 4, 46 fn 1. Accused and witnesses are sworn. Evidence recorded per Notes.)

E2. The Prosecutor produces Statement(s) as to Character and Particulars of Service(1), and certified true copy (copies) of Conduct Sheet(s)(2), purporting to refer to the accused, which he submits to the Defending Offr for examination, and then to the Court for admission in evidence. The Court is satisfied that these documents refer to the accused, because (i) they purport to be signed in the manner required by AA 163(l) (g) (h), and (ii) they purport to refer to (a) soldier(s) having the same number, rank, name and corps as the accused. Admitted in evidence and marked Ex B and Ex C respectively.(3)
(1. MFB 355 or AFB 296. 2. MFM 6. 3. RP 46, KR Can 558. If above documents not produced, see RP 46 fn 1 para 1.)

E3. President to accused : Do you wish to address the Court on the Statement(s) and Conduct Sheet(s), and in mitigation of punishment ?(1) Ans. YES. BY MY DEF OFFR. (2)
(1. RP 37(C), 46(D). 2. Address, if any, recorded per Notes. Court should permit accused or his witnesses to prove on oath anything here or previously stated which would affect the amount of punishment. RP 37(F) fn 7.)

E4. The President states that the Court is closed to consider the sentence, and that the sentence to be awarded by the Court, being subject to confirmation, will not be announced, but will be promulgated later, and the proceedings in open court are accordingly terminated.(1)
(1. AA 54(6), RP 120(A).)

E5. The Court considers the sentence.(1) The President records the sentence in Part I of the Schedule, which is dated and signed by him ~~and the JA, if any~~.(2) J.K.R.
(1. When several accused tried separately see RP 34 (C). One sentence only, comprised of the punishment or punishments laid down in AA 41, 44 and its proviso, is to be awarded to cover all charges in all charge sheets on which accused found guilty. RP 48. As to sentences see AA 44, 138, 182, RP 46-50, 69, 118, 119(A), KR Can 309, 330, 563-566, Overseas RO 309, 2312, MML p 60, 757-759. As to sentences assigned for civil offences by the law of England see AA 41(3), MML p 130. When accused already under sentence of imprisonment or detention see AA 44(18), 68(1), KR Can 564. 2. RP 50. As to release from arrest by Confirming Offr see KR Can 567. As to assembly and disposal of record after trial see instrs on back of Convening Order.)

PRESIDENT OR JA WILL INITIAL ALL DELETIONS AND ALTERATIONS.

CHARGE SHEET

The accused D 62390 Private Raoul FAUTEUX, a soldier of the Royal 22e Regiment, Canadian Army Overseas, CMF, on Active Service is charged with:-

FIRST CHARGE
AA Sec 12 (1) (a)

WHEN ON ACTIVE SERVICE
DESERTING HIS MAJESTY'S SERVICE

in that he,

in the Field, in Italy, on the 19 of Sept. 44 while serving with his platoon in a foward area, with intent to avoid such service, absented himself from his platoon from approximately 2200 hours 19 Sept. 44, until he surrendered himself at approximately 1900 hours 21 Sept. 44.

Total of absence:- 1 day 21 hours.

(J.V. ALLARD) Lt.-Col.
Comd. Royal 22e Regiment.

In the Field
3 Oct. 44.

TO BE TRIED BY FGCM

(J.P.E. BERNATCHEZ) Brigadier
Commanding 3 Can Inf Bde.

In the Field
Oct 44.

FIELD GENERAL COURT-MARTIAL

(Whether the accused to be tried is under his comd or not, a FGCM may on application to him be convened by any offr of Cdn Army Overseas, or of any other force if authorized in law, in immediate comd of troops on active service, subject to RP 105(C) and restrictions imposed by appropriate authy. AA 49, 50, RP 104-107, 114. As to the duties and privileges of the Convening Offr in dealing with the application see MML Chap V paras 20 and 23, RP 87(5).

There should be a separate Convening Order for each person to be tried separately by the same Court. RP 71(C), 109. As to separate charge sheets see RP 62, and as to separate trial on charges in the same charge sheet see RP 108. As to two or more accused charged jointly see RP 16, 109. As to reasons for showing (a) permanent or confirmed rank, and (b) appmt, A/rank or A/appmt, if any, see AA 182, 183, fns, KR Can 308, 328, 330.)

ACCUSED.

Number.	(a) Prmnt R.	(b) Appmt, A/R or A/Appmt.	Full Christian Names.	Surname.	Unit.
D62390	Pte		Raoul	FAUTEUX	R22R

CONVENING ORDER.

1. Whereas complaint has been made to me, the undersigned, that the person(s) named above as the accused, being subject to military law, has (~~have~~) committed the offence(s) set forth in the Charge Sheet(s) attached and on (*date*) 11 Oct 44 endorsed by me, (~~or by an offr of my staff for me~~), "To be tried by Field General Court-Martial".

2. And whereas I am of opinion that it is not practicable that such offence(s) should be tried by an ordinary General Court-Martial; (~~and that it is not practicable to delay the trial for reference to a superior qualified offr~~).
(*Delete part in brackets when not required for compliance with RP 105(C).*)

3. I hereby convene a Field General Court-Martial to try the said person(s), and to consist of the Offrs appointed or detailed hereunder.

4. ~~I am unable to appoint (a) three Offrs to form the Court, (b) a Fd Offr as President, for the reasons I have attached hereto.~~
(*AA 49, RP 106(B), 107(A). Delete the whole or part, if not applicable.*)

5. ~~I also appoint as Judge-Advocate thereat the Offr mentioned hereunder.~~
(*RP 106(E). Delete, if none appointed.*)

PRESIDENT.

(Rank.)	(Must be named. RP 106.)	(Unit.)
Major	J K Rhodes	WNSR

MEMBERS.

(Rank.)	(Named or detailed. RP 106.)	(Unit.)
Capt	C R Segee	CYR
Lieut	L Descoteaux	R22R

WAITING MEMBER.

(Rank.)	(Named or detailed, if any. RP 106.)	(Unit.)
Lieut	C M Forsythe-Smith	WNSR

JUDGE-ADVOCATE.

(Rank.)	(Must be named, if any. RP 106.)	(Unit.)

On Active Service in the Fd

in Italy
(Country.)

Date 11 Oct 44

(Signed personally. RP 105 fn 2.)

Brigadier
(Rank.)

Commanding 3 Cdn Inf Bde
Convening Officer.

CONVENING OFFR WILL INITIAL ALL DELETIONS AND ALTERATIONS

4/38A CFAPS (1st Revn of APAS) 40/P & S/1697 14001

(See overleaf for oaths and notes for use on trial.)

J.R.R.

Evidence in the case of D 62390 Pte. Raoul Fabbeux

First Witness

D139315 Sgt. Rhea J.H.R. having been duly sworn states: by the Prosecution.

Q When the Coy. Comd. warned your pl. to dig in & stay in their slit trench, having seen the accused J.H.R. ~~following that order~~, did your pl obey.

A. Yes sir.

Q. ~~Did the accused stay in~~ J.H.R.
Did the pl remain in the slit trench.

A. All the pl. remained in the slit Trench.

Q. Did the white pl. know that they were in a tactical pos.

A. Yes Sir.

Cross Examination by the Defence.

Q. How did accused conduct himself in previous attacks

A. In previous attacks his conduct was satisfactory

Q. Was Pte. He accused with you when you were ordered to attack.

A. No. Sir.

Question by the Court.

Q. When did you first notice that Pte. Fabbeux was absent.

A. When the Coy was forming up to move forward to the attack.

Q. Had you previously warned your pl. before going into the attack

A. Yes. Sir. But Pte. Fabbeux was not present J.H.R.

MEDICAL OFFICER'S CERTIFICATE

I certify that I have this morning examined No D62290
Rank Pte. Name Tantum R. of R.22 R.
and in my opinion he is fit/~~unfit~~ to undergo trial by Court Martial.
Station In the field
Date 12-10-44

J. Vandermaulen Capt. S.A.M.C.
(Medical Officer)

Q. When was the next time you saw Pte. Fawbert after sending him aboard.
A. On the 24 Sept. 44 in the Coy. Cond.'s office.
Q. When did he go aboard.
A. 19th Sept. 44. R.P. 83 (B) complied with Ex. 2.

Second Witness for the Prosecution.
D36533 Pte. Bristow L.H. having been duly sworn states.

Question by the Prosecution.
Q. When the Coy. Cond. on the 19 Sept 44 warned the Pl to dig in and stay in their slit trenches did everybody obey.
A. Yes Sir.
Q. Was open ground in a tactical position. A. Yes Sir.
Q. What position did the Coy have in relation to the Bn
A. They were in Reserve.
Q. Were you there when the Coy was warned that they were to attack.
A. Yes Sir.
Q. When did you see the accused the last time.
A. I saw them at 2/10 hrs approx. on the 19 Sept. 44 in the Coy. position.
Q. When did you next see him
A. I saw the Military police escorting him on the 24 Sept. 44.

Cross examination by the Defence.
Q. Did Pte Fawbert show signs of nervousness when you last saw him on the 19th Sept. 44.
A. Yes. Sir.
Q. Can you describe any of them showing Ex. R.
nervousness

A. Yes Sir. He was very nervous and jumpy and crying. When I spoke to him I could get no proper answers.

Re Examination by Prosecution:

Q When you saw these signs of nervousness did you tell him to report to the S.B.

A. No Sir

Q. Do you know if he reported to the S.B.

A I do not know.

R.P. 83 (B) complied with J.K.R.

Third Witness for the Prosecution.

Capt. J.B. Pursaan not being available the prosecution submit a certificate of apprehension purporting to be signed by Capt. C.R. Davidson of No 4 Bn. Depot Centre stating that the accused surrendered himself to them at 1400 hrs. 21st day of Sept. 44. Marked exhibit 'H'.

The Defence have no objection. The Court admits it.

R.P. 83 (B) complied with J.K.R.

J.K.R.

D 159315 Sgt. Blear J.H.R. re-called by the Court.

Question by the Court.

Q. Did you notice any signs of nervousness when you saw him at the time the Coy. was warned to dig in.

A. He was slightly nervous.

Q Did you see him after that day.

A. No Sir.
Proceedings of the duties to resume. vide
R.P. 83 (B) Complied With.

First Witness for the Defence:

D 62380 Pte. Fauteux R. sworn states duly on:

On the day of 18th Sept I followed the Coy. to take up position in a more forward area. I was not shelling much and the shelling rendered me more nervous. During that following night while being shelled heavily I took shelter with the Runners in a nearby trench. From then on I don't remember much that happened. I came to myself on the following day about noon in a Culvert. I left the Culvert and met some Men Stretcher from them I enquired if they had seen any soldiers with the R22R flash. I realized I passed Not A Genl Hosp. Regt. so I reported to 4 Bn, with the intention of seeing the M.O. The following morning I saw the M.O. I had fever and vomiting so he placed me sick duty for 4 days. As I had been on a close contact with my pl. I was ordered to the Base. [illegible] Bn. [illegible] complied with [illegible]

D63539 Pte Brisbois L.H. re-called by the Court
Examination by the Court.

Q. Whilst you were in the Cog Area before the attack commenced were you shelled heavily?

A. Yes sir.

Q. Do you remember being in a house with the deceased.

A. Yes Sir.

Q. Was it at that time that he was showing signs of nervousness

A. Yes Sir. R.P. 82 (A) complied with J.A.R.

Prosecution declines to sum up.

The defence sums up and the Statement is attached.

J.H.R.

Summing up by defence.

According to the evidence given by Lt. Beaubien the accused was suffering from a nervous break-down. The Prosecution has no evidence that the accused was not suffering from a nervous break-down. Therefore I can say that the accused was under the influence of a nervous break down and as a consequence was not responsible for his actions.

When Lt. Fontaine reported to 4 Bn he was admitted to the R.A.P. and was treated during four (4) days for a fever resulting from the previous state of his nerves.

When Lt. Fontaine left the Company he did not think of going to his R.A.P. because he was unable to think on his condition. The proof is that he only came back to the world the morning after. Having been an intelligent N.C.O. previously he would certainly have reported to his R.A.P. had he been normal instead of wandering around for one day and 21 hours without any ration.

Lt. Fontaine had participated in attacks before his absence. If the platoon commander was here he could certify, as Sgt Bleau, that the accused had done a good job. Had he been injured, the day of his absence, he would have [illegible]

stick to the job.

According to the evidence this man is not guilty and far from deserving a penalty he should be sent to a specialist and examined thoroughly.

E&S - PLEA IN MITIGATION

The accused D-62390 Ste Raoul Fontaine has been serving four years in the army. During this time he has always proved to be a very good soldier. He has always been disciplined. He was made an N.C.O.

He voluntarily reduced to the rank because he thought that he was physically unable to lead men in action.

His mother, in Canada, depends on him entirely for her living. If the accused was to suffer a long sentence, his mother would be in poverty.

EXHIBIT 'A'

CERTIFICATE UNDER ARMY ACT, SECTION 163 (1) (i).

I Capt. C.E. Dunn certify that D. [illegible] Adjutant of the R.A.S.C.

Regiment surrendered himself to H.P. Royal Patrol at 11.00 on

the 21 day of Sep 1944 as a deserter (or absentee without

leave).

Date 21 Sep 44 1944 Signature C.E. Dunn Capt

ARMY FORM B.296.

Statement as to Character and Particulars of Service of Accused.

Number.	Rank.	Name	Regiment (or as the case may be).
2623901	PTE	RAOUL FAUTEUX	R.C.R.

1. The following is a fair and true summary of the entries in the regimental and squadron, battery or company conduct sheets† of the accused, exclusive of convictions by a court martial or a civil court, of summary awards under section 47 of the Army Act, and of cases in which trial has been dispensed with :—

NOTE.—At a trial by field general court martial this summary may be compiled from the field conduct sheet.

The conduct sheet(s) mentioned should be produced in court with this statement but not annexed to the proceedings.

† See para. 677, K.R., 1940.

* The numbers herein stated should correspond with the number of entries in the conduct sheets, precedence being given to the most serious offence in each entry and to any recognised special acts of gallantry or distinguished conduct.

INSTRUCTION.—If the charge is for drunkenness the entries for drunkenness must be stated separately and dated.

	* Within last 12 months.	*Since Enlistment.
For	times	times.
For	times	times.
For	times	times.
For	times	times.
For	times	times.

~~Number of instances of gallantry or distinguished conduct,~~

or

There are no entries in the conduct sheets of the accused.

2. The accused has not been previously convicted, *or*

Previous convictions† of the accused by a court martial or a civil court, summary awards under section 47 of the Army Act, and dispensations with trial under section 73 of the Army Act, are set out in the schedule annexed to this statement.

3. ~~The accused is not under sentence at the present time, or~~ The accused at the present time is ~~under sentence for~~ _____ beginning ~~on the~~ _____ day of _____

4. The accused has been in confinement, awaiting trial on the present charges, for Nil days in civil custody, and 11 days in military custody, making a total of 11 days, of which — days were spent in hospital.

5. The present age of the accused according to his ~~record of service~~ attestation paper is 25 years

6. The date of his ~~commission~~ attestation specified in his ~~record of service~~ attestation paper is 8 Jul. 40

7. The service which the accused is allowed to reckon towards discharge or transfer to the reserve is N/A

8. The accused is entitled to deferred pay or gratuity in respect of N/A service

9. The accused is entitled to reckon — service for the purpose of determining his pension, etc.

10. The accused is in possession of, or entitled to, no military decoration or military award ~~(or is in possession of or entitled to, [state any military decoration or reward].)~~

11. (*If the accused is a warrant officer.*) The accused before he was made a warrant officer last held the regimental rank of N/A

12. ~~(In the case of an officer.) The accused holds in the army the rank of _____ dated _____ and in his regiment (or corps or department) the rank of _____ dated _____~~

(72625) W1.15932/144 175,000 6/41 A.E.F.W.Ltd. Gp.498

Schedule of Convictions by a Court Martial or Civil Court, of summary awards under Section 47 of the Army Act and of cases in which trial has been dispensed with of accused.

No. _____ Rank _____ Name _____ of _____ Regiment (or as the case may be).

(INSTRUCTION—A verbatim extract from the regimental books, stating these convictions and dispensations with trial, must be inserted.)

Description of court by which tried, or status of officer disposing of the charge or dispensing with trial.	Date and place of trial, or summary award under A.A. 47, or of order dispensing with trial.	Charges upon which convicted, or in respect of which trial was dispensed with.	Sentence of the court or authority disposing of the charge or order of the dispensing authority.	Punishment remitted.
		MFM 6 is NOT available at UNIT.		

I HEREBY CERTIFY that the foregoing schedule of convictions and dispensations with trial is a true extract from the regimental books in my custody.

Signed this 8th day of Apl 47

J.B. Rowan Lt Adjt
for O/C Records
R.A.R.C.

J.B.R.

12. The accused has served as a non-commissioned officer continuously, without reduction, to the present date.

In the rank of _____ years _____

In the rank of _____ years _____

To the rank of _____ years _____ Date of Promotion _____

(INSTRUCTION—If any matter in any of the above paragraphs cannot be stated from the regimental books the paragraph must be struck through, except that in the case of a trial by field general court-martial the information may be collected from such sources as are available and the paragraph retained amended accordingly.)

No D62390 Name Pte Raoul Fauteux Sqn, Battery, or Company "D" Corps C.I.C. Date of enlistment 8 July 40 GC Badges Service or Proficiency Pay MFM 6 (AFB 122) 40/P&S/136 (3438)

Date of last entry in Company Conduct Sheet | No and date of last drunk | Period not reckoning towards freedom from extra fine | Sheet No | Signature OC Company, etc | Character

Place	Date of offence	Rank	Cases of drunkenness	OFFENCE	Names of Witnesses	Punishment awarded	Date of award or of order dispensing with trial	By whom awarded	Remarks
				Original is not available					
				Certified to be a true copy from Regt'l Buff in my possession. Stafford Lieut. Actg Offr i/c Records R.R.					
									E & E Jan 1940

SUMMARY OF EVIDENCE

In the case of D 62390 Pte Raoul, FAUTEUX, a soldier of the Royal 22e Regiment, Canadian Army Overseas, CMF, on active service.

By direction of the Commanding Officer this Summary of Evidence is taken under oath.

First witness For the Prosecution.

D 139315 Sgt BLEAU, J.H.R. Royal 22e Regiment, having been duly sworn states:-

" I am D 139315 Sgt BLEAU, J.H.R. of the Royal 22e Regiment, posted to "D" Coy, in charge of No. 16 Platoon.

On the 19 September 1944, the Coy was in reserve At approximately 1900 hours the Coy stopped on a tactical position and the Company Commander warned everybodyin the Coy. to dug in and stay in their slit trenches until further orders. I swear that D 62390 Pte Raoul, FAUTEUX, was present, when the Company Commander warned my Platoon to dug in and stay in the slit trenches. At approximately 2200 hours on the 19 September 1944, order was received to move for attack. I checked my Platoon before proceeding to attack and found D 62390 Pte Raoul, FAUTEUX absent. I checked again after the attack was over and D 62390 Pte Raoul, FAUTEUX was still absent. I did not see him after that until the 24 September, 1944, when the accused D 62390 pte Raoul FAUTEUX placed under escort, was paraded to the Company Commander in his office.

The accused declines to cross examine the witness.

R.P. 83 (B) complied with.

Sgt. Bleau J.H.R

Second witness For the Prosecution.

D 63533 Pte BRISEBOIS, L.A. Royal 22e Regiment, having been duly sworn states:-

" I am D 63533 Pte BRISEBOIS, L.A. of the Royal 22e Regiment, posted to "D" Coy, Section 1.

On the 19 September 1944, the Company was in reserve. At approximately 1900 hours the Company stopped on a tactical position, and the Company Commander warned everybody in the Company to dug in , and stay in their slit trenches until further orders. I swear that D 62390 Pte Raoul FAUTEUX was present when the Coy Commander warned us to dug in and stay in the slit trenches . At 2000 hours on the 19 September 1944, before the Coy's move D 139315 Sgt BLEAU, J.H.R. came to me and said to me: Have you seen D 62390 Pte Raoul FAUTEUX around ? I told him: D 62390 Pte Raoul FAUTEUX, came to me at 2130 hours that date (19 Sept. 44) gave me my tunic and told that he was going to get some cigarettes. I did not see him after that, until the 24 September 1944, when he was escorted by Military Police, to our detention place.

The accused declines to cross examine the witness.

R.P. 83 (B) complied with.

B.L. Brisebois

Third witness For the Prosecution

Capt. J.B. ROUSSEAU, adjutant Royal 22e Regiment, having duly sworn states:-

I Capt. J.B. ROUSSEAU, Adjutant Royal 22e Regiment, in charge of the Unit's Records, [illegible] Exhibit "A" certifying that D 62390 Pte Raoul FAUTEUX, of the Royal 22e Regiment, surrendered himself to No 4 BN Report Centre at 1900 hrs. on the 21st September 1944 as a deserter. That Exhibit "A" have been signed by Capt. C.E. DAVIDSON, on the same date (21 Sept. 44.)

R.P. 83 (B) complied with.

J.B. Rousseau Capt

QUESTION TO ACCUSED

Do you wish to make any statement or to give evidence upon oath. You are not obliged to do so, but any statement you make or any evidence you give, will be taken down in writing and will be used as evidence.

The accused having been duly cautioned in French, in accordance with RO 1424, reserves his defence.

ANSWER BY ACCUSED

I reserve my defence.

I certify that the foregoing Summary of Evidence consisting of 2 (two) pages, was taken down by me, in the presence and hearing of the accused, and that rules of procedure 4 (c), (d), (e), (f), and (g), were complied with.

In the Field
3 Oct. 44.

Leo Adrien Saint
Officer taking Summary.

A.A.F.

LIST OF WITNESSES FOR PROSECUTION

in the case of

D 62390 Pte Raoul FAUTEUX, Royal 22e Regiment.

FOR THE PROSECUTION

D 139315 Sgt Bleau, J.H.R. R22eR

D 63533 Pte Brisebois, L.A. R22eR

Capt. J.B. Rousseau. R22eR

FOR THE DEFENCE

LIST OF EXHIBIT

"A" Certificate of arrest from 4 Bn Report Centre signed by Capt C.E. DAVIDSON on the 21st September 1944.

I hereby acknowledge receipt of a true copy of a Summary of Evidence taken prior to my trial by FGCM. I furthermore acknoledge receipt of a true copy of a charge sheet upon which I am being brought into Court-Martial.

I desire the services of an officer to represent me at my trial.

I desire the services of Lieut. J.F.R. Lafleche.

if he is available.

R. Fauteux

In the Field
3 Oct. 44

H.Q.C. 55-F-865 CONFIDENTIAL

DEPARTMENT OF NATIONAL DEFENCE OTTAWA, CANADA

SUBJECT

FIELD GENERAL COURT-MARTIAL

FAULKNER, T. C-102470 PTE.

CONFIDENTIAL
H.Q.C. 55-F-865

CENTRAL REGISTRY	DATE	P.A. OR D.F.	INITIALS	REFERRED TO	FOR	INITIALS	DATE
				(If purpose for which referred cannot be expressed on the line, enter here "With Minute")			2-12-46

OVERSEAS COMBINED

NOTICE

1. Files should be retained no longer than absolutely necessary. If a file is frequently needed at short intervals, it is better to D.F. it for two or three days than keep it out of Central Registry indefinitely. This ensures it being completed and kept in order, and also gives other officers an opportunity to see same.
2. Before finishing minute to notify whenever a file is passed direct to another branch.
3. All enclosures should have the official file number.

PASS THIS FILE IN ENVELOPE

RECEIVED. 5 MAR. 45 JAG BR. CMHQ.

Correspondence to be PINNED here

RECORDED AT CMHQ IN AB 160 47/11

Army Form A.3

Form for Assembly and Proceedings of Field General Court Martial on Active Service.

PROCEEDINGS.

A.

Order convening the Court.

On Active Service, this Seventeenth day of February, 1945.

Whereas it appears to me, the undersigned, an officer in *Command of 3rd Parachute Brigade, on active service, that the persons named in the annexed Schedule, being subject to Military Law, have committed the offences in the said Schedule mentioned.

And whereas I am of opinion that it is not practicable that such offences should be tried by an ordinary General Court Martial; *~~[and that it is not practicable to delay the trial for reference to a superior qualified officer.]~~

I hereby convene a Field General Court Martial to try the said persons, and to consist of the Officers appointed or detailed hereunder.

*Omit where Convening Officer is a Commanding Officer or is of Field Rank.

*Omit if not applicable.

~~*[I am unable to appoint*~~

~~*(1. Three Officers to form the Court.)~~

~~*(2. A Field Officer as President.)~~

~~for the following reasons, namely:—]~~

NOTE.—The President must be named. The members and waiting members (if any) may be mentioned by name, or the number and ranks and the unit to which they belong may alone be named. In the latter event, the ranks, names, &c., of the members of the Court, as constituted, will be recorded on the proceedings.

President.

Rank.	Name.	Regiment.
Major	A. TILLEY	Parachute Regiment

Members.

Rank.	Name.	Regiment.
A Captain	to be detailed by OC 1 (Cdn) Parachute Battalion.	
A Subaltern	to be detailed by OC 9 Parachute Battalion	

*Must be signed personally by the Officer actually in command at the time, and all alterations in the composition of the Court to be initialled by him.

* Signed J.L. Bagshaw Brigadier,

Commanding 3rd Parachute Brigade.

Convening Officer.

PROCEEDINGS REVIEWED

REVIEWING AUTHORITY'S BRANCH C.M.H.Q.

SCHEDULE

Number, Rank (a), Name and Unit of Accused (b)	Offence charged	*Plea	Finding, and if Convicted, Sentence (c)	How dealt with by Confirming Officer (d)
C102470 Pte FAULKNER, T. 1 Cdn Parachute Battalion, Canadian Army Overseas.	See Charge Sheet annexed.	N.G.	Not guilty.	

* Question to be asked of accused, if he pleads not guilty (R. of P. 39 (a)):—
"Do you wish to apply for an adjournment on the ground that any of the rules relating to procedure before trial have not been complied with, and that you have been prejudiced thereby, or on the ground that you have not had sufficient opportunity for preparing your defence?" No.
Answer (*to be recorded on separate sheet if necessary*):—

(Signed) ..... Brigadier (Signed) .....
Commanding 3rd Parachute Brigade.
Convening Officer (e) *President.*

(a) Appointment acting rank or acting appointment, if any, to be stated in brackets after the substantive rank.

(b) Unless unavoidable, not more than three names are to be entered on one form, and in serious cases one only.

(c) Recommendation for mercy, if any, to be inserted in this column.

(d) It is not necessary that the Confirming Officer should sign his name in this column. Initials are sufficient.

(e) Must be signed by the same Officer who signs on the first page, and all alterations in the first two columns of the Schedule to be initialled by him.

Evidence and Charge Sheets (if necessary) to be PINNED here.

B. Certificate of President as to proceedings.

I certify that the above Court assembled on the eighteenth day of February, and duly tried the persons named in the Schedule, and that the plea, finding and sentence in the case of each such person were as stated in the third and fourth columns of that Schedule.

I also certify that :—

1. The members of the Court
2. The witnesses
*(3. ~~The Interpreter~~) N/A
*(4. ~~The officers under instruction~~) N/A

were duly sworn.

*Omit if not applicable.

Signed this eighteenth day of February 1945.

President of the Court Martial.

C. Certificate in case of death sentences.

*See footnote (b) on page 762 M.M.L. 1929.

I certify that the terms of *A.C.I. 570 of 1918 have been complied with.

Signed this day of 19 .

President of the Court Martial.

D. Confirmation.

I have dealt with the findings and sentences in the manner stated in the last column of the Schedule, and, subject to what I have there stated, I hereby confirm the above findings and sentences.

*(I direct that the soldier named in the margin be not committed to prison or detention barrack until further orders.)

*To be omitted unless penal servitude, imprisonment or detention having been awarded, the Confirming Officer either has no authority to commit to prison or detention barrack, or, having such authority, recommends suspension.

Signed this day of 19 .

Confirming Officer.

Promulgated and extracts taken in the case of

(a) (Dated) ..... (Signed) .....

Promulgated and extracts taken in the case of

(Dated) ..... (Signed) .....

Promulgated and extracts taken in the case of

(Dated) ..... (Signed) .....

(a) When several cases are promulgated in one unit on the same day the Officer need only sign once.

Convening Officer

The following facts brought the Court after long deliberation to the decision of Not Guilty.

(a). Great negligence on the part of the MCO of the Army Radar vehicle who ordered his driver to go the wrong way up a one way rd.- the sign of which they had admitted they had seen. The fact that they saw another vehicle disobey the sign does not excuse them.

(b). The rd on which the Jeep was travelling was obviously under enemy observation - as seen by the Court and no order need have been given to a man of reasonable intelligence that this was so. Therefore speed within bounds was to be expected.
The speed of the jeep as given by two prosecution witnesses in the other MCM was simple. Their evidence must be treated with reserve as they only saw the vehicle off for six yds - and in his accident report the accused said 15-20 mph - although he told Court 25 mph.
The speed of the radar truck was 15-20 mph on the wrong way up a one way rd NOT under enemy observation
Rd conditions were bad therefore the speed in both cases was probably too great. but the accused had some reason - the Radar people knew.

(c) No evidence was produced that the single light was or was not visible on the day of the accident - but there is plenty of evidence to say that a 15 Cwt truck was in the habit of parking in front of it and that we driver had seen it until after the accident. Therefore the accused must be given the benefit of the doubt on that pt.

(d). The words of the charge "driving so negligently thereby causing" to be interpreted as meaning of the above remarks the Court did not find that there was any of the causes of the accident could be attributed to the accused - & that he was NOT driving so negligently as to cause the accident.

Accused had the Radar M.Co. obeyed the road sign.
Therefor he was found Not Guilty of the Charge.

Lt Col Major
President FBCM

16 Feb 45

elects trial by Court Martial

2.

CHARGE SHEET

In the case of C102470 PTE FAULKNER, T. 1 Cdn Para Bn., Canadian Army, Overseas.

A. A. 40 FIRST CHARGE

WHILE ON ACTIVE SERVICE, NEGLECT TO THE PREJUDICE OF GOOD ORDER AND MILITARY DISCIPLINE.

in that he

in the field, on 24 ~~Feb~~ 45, at approximately 0915 hours did drive a car 5 cwt 4x4 WD No ~~2~~5401973 so negligently thereby causing it to be involved in an accident with Morris "T" Truck WD No. 24501973 on charge to 100 Army Radar Battery.

* h.

M. 5834646

(J.A. NICKLIN) LT COL
COMMANDING OFFICER
I CDN PARACHUTE BN

Note Tried by F.G.C.M.

Brigadier
Cmd. 3 Parachute Bde

FORM No. 1
Page .....

PROCEEDINGS OF A FIELD GENERAL COURT MARTIAL IN THE FIELD.

Trial of No. C 107470 Pte Faulkner T. 1 Cdo Para Bn

Members (Lt P.G. Tisdale ..... detailed by. 1 Cdo Para Bn.
Lt A.E. Rodd ..... detailed by. 9 Para Bn.

Prosecutor. Capt. T. Simpson. 1 Cdo Para Bn

Defending Officer. Lt A.O. Tuckey

---

1. The Court is satisfied that it is legally constituted. Lt Adj Rodd has less than five years service but only in the exigencies of the service was not able to appointed.
2. The Convening Order (A F A3 p.1.) is read in the presence of the accused.
3. The accused is asked "Do you object to be tried by the President or either of the Members whose names you have heard?"

   Answer No.

4. The President and Members (~~Officers under instruction listed overleaf~~) (~~Judge Advocate~~) (~~and Shorthand Writer~~) are duly sworn (MML p.762).
5. The accused answers to his number and name and is arraigned on the charge(s). Charge sheet marked P and ab initio.
6. ~~The accused having pleaded GUILTY~~ to the ..... charge(s) ~~IC 35(B) is complied~~

   AND/OR

7. The accused having pleaded NOT GUILTY to the ..... charge(~~s~~) is asked the question at the foot of AF A3 p.2 and his answer is there recorded AND
8. The Prosecutor makes an opening address outlining the case for the prosecution (~~hands in a written address marked .....~~ Read) (~~makes no opening address~~).
9. The Prosecutor calls evidence on the charges to which the accused has pleaded NOT GUILTY recorded below and at pages 2 3 4.

Certificate of medical fitness of accused marked S and

1 CMJs/302. ab initio

S.

CERTIFICATE OF MEDICAL EXAMINATION

18 Feb 45

I certify that I have medically examined the accused C-102470 Pte Faulkner T. and find him FIT to undergo trial by Court-Martial.

p/c Costigan Capt R.C.A.M.C.
(P.G. Costigan) Capt RCAMC
1 Cdn Parachute BN

13 FEB 1945
1st
CDN. PARACHUTE
BATTALION

1st Witness. Sjt. Williams A.E. 1076794. A. Tp 100 Army Radar Bty RA
LCpl Rgt Bn. Sworn states:-

I recognise the accused as the driver of the vehicle with which I collided on 24th January. I was ordered by my troop Commander to accompany Driver Clarke to Weeard for dental treatment. Since some work was needed I decided to collect some on the way a slight detour thought HAELETH being necessary. In HAELETH we approached a right hand junction which was signed warning "NO ENTRY" we paused there for a few seconds whilst Dvr Clarke asked me if it was in order for we to proceed up this road. I replied that since other vehicles were going in the same direction the sign no longer applied and we started off. About 400yds from this junction a Cafe on the right juts out so obscuring the view along the road ahead. When almost level with the Cafe we saw a Jeep approaching about six yds away. It was impossible for us to swerve either to the right because of the cafe or to the left because of the steep bank and in any case there was no time. My Driver applied his breaks but due to the icy condition of the road they had little effect and so we collided with the Jeep. I ordered my driver to switch off the petrol - we both got out and made out the accident report. Before having finished I we had to point the vehs to the side of the rd to allow other traffic to pass. I estimated the speed of the Jeep to be 30mph and when making out the accident repot I asked the accused what speed he was going to which he replied 'about 30mph'.

X Examined

I was in charge of the vehicle in which I was travelling. There was no time to warn the driver that the Jeep was coming. I have had no experience in judging speeds. The driver of the Jeep had a blow on the head but appeared to be alright. The responsibility for my vehicle going against the NO ENTRY sign was mine.

Questioned by the Court.

The Vehicles for which we moved our vehicles. The vehicle for which we waited was consisted of a three seat procedy the same way as the Jeep and a Jeep + a half track procedy the same way as my vehicle.

6. The vehicle that went ahead of us ~~was~~ against the one way sign was about half a minute ahead.

2nd Witness. Major T. P. Hanson. 1 Cdn Para Bn. Sworn States:-

I recognised the accused who was a driver attached to my Company and was the driver of the jeep involved in the accident with Gnr. Clarke of A Tp. 100 Radar Battry. On 2nd Jan. During the day I sent him to HQ Coy in the jeep to pick up trailers. The accused Pte Faulkner had previously travelled both ways along that road on which the accident took place before. The point at which the accident took place is a fairly flat road as far as I remember.

X Examined

1. The Co. said that parts of the road in question were under enemy observation - specific parts were not mentioned.
2. I at no time told the accused to obey the 5 mph sign on this road.
3. The road widens again on the side of the Cafe from which the Jeep was travelling.

3rd Witness. No 3316723 Gnr. Clark J. 100 Army Radar Bty Sworn States:-

On 2nd Jan at 0915 hrs when driving through HAELEN we approached a turning to the right which was marked "Warning MOEMERY" As we saw other vehicles going up this road we presumed it was in order for us to do likewise. When we turned off we saw another vehicle going round the bend past the cafe. The vehicle appeared to be a half track. We then went up this street, and when I was in line with the cafe, a jeep driven by the accused whom I now recognise appeared ahead at the approximate distance of 8yds. I immediately applied my brakes and it was obvious that the Jeep driver had also done the same as I saw his front wheels lock. We then collided. This was the first time I had driven along this road which was very icy at the time of the accident. At the point where the accident occurred I was going slightly uphill. The Jeep appeared to be travelling at 30mph this was subsequently confirmed by the driver when making out the accident report. I was travelling at approximately 15mph at the time.

X Examined

1. I saw the 'no entry' sign is passed it on the orders of my S/T
2. I have been driving for eight years and considered that the Jeep was going at 30mph.
3. The Sgt who was on the outside of the bend did not give me any warning of the approach of the Jeep. I expected to be given warning under such conditions if the vehicle was approaching.

The Court adjourns to visit the scene of the accident

Fourth Witness Maj J.A. Micklem Cond. Cdn Para Bn sworn states

I recognise the accused as the driver in question. On the morning of the accident the accused came into the Command Post and on being questioned stated he had just returned from the RAP and at the time of the accident was going at 25mph and had been unable to avoid it.

X examined

1. The accused may have been present when I gave instructions that part of this road was under shelling observation
2. The five mph signs were up on this rd five days before the accident.
3. No official instructions were given by me to the effect that these signs were to be adhered to

R examined

The 5 mph signs was on the rd after the accident and was plainly visible

Fifth witness Capt J.A. Smithson Adjt (RC) Cdn Para Bn sworn states

I identify AF A 3676 with attached statements. * AFA 3676 purports to be signed by the accused. Authy. Order in Council (PC 8583) of 10 Nov 44 CRO 21 Army Gp 774 I identify the accused as being the drvr of 4x4 5 Cwt W.D No M 5834646 referred to in the accident report.

* marked R. and at 1st proceedings

TO BE USED ONLY ON PLEA OF NOT GUILTY.

Form "B"
Page ..5....

10. The case for the prosecution is closed.

11. The accused is informed of his rights MP 40(A) and is asked:-

Q1. Do you wish to give evidence yourself on oath? A1...No.....

Q2. Do you intend to call any other witnesses? A2...Yes.....

Q3. Are they witnesses as to character only? A3...No.....

12. If answer to Q3 above is "No" the ~~accused~~/Defending Officer (~~makes an opening address outlining his case~~) (~~hands in a written address marked~~.....)(makes no opening address).

13. The ~~accused~~/Defending Officer calls evidence (recorded at p.4+7).

NOTE:- Final addresses of Prosecutor and ~~accused~~/Defending Officer at p.~~49~~.....(~~or marked~~.....).

For order of speeches see MP 40 and 41

Defence

1st Witness. Lt. J. Gregor. 1st Cdn Para Bn. Sworn states:—

I am ATO of the 1st Cdn Para Bn and the accused whom I was recognise is a member of my transport section. The speed limit of Jeeps as laid down at the time of the accident was 30mph. Drivers are expected to obey signs erected by the roadside. No particular instructions were given about this the road in which the accident took place.

X examined

The accused has been ~~driving~~ driving a vehicle to my knowledge since September.

Re-examined

I am not in a position to give an accurate resume of the accused's driving career. I can only speak since I am the accused has been in the tpt section.

Questioned by the Court.

I am not sure of the price of a Jeep but in Canada it was about 1450 dollars.

2nd Witness B 118048 Pte Mason GC. 1st Cdn ParaBn sworn states:—

I am a driver in the tpt section HQ. Coy. I have used the same road frankly in the same direction as the accused did on the day of the accident. Although I used this route before the accident I had never seen the Stop sign until after the accident when it was brought to my notice. When this was done I looked particularly for the sign which ~~the~~ had been concealed on previous occasions behind a 15cwt truck which was habitually parked there. I was under the impression that the road itself was under roadworks and I was always instructed that one should drive fast along such roads provided no dust is raised.

Not X Examined

Court

I was told by another driver that the road was under roadworks. I believe the original statement came from the CO.

3rd Witness. 4 8101809 Pte Yeomans. D.R. 1st Cdn Para Bn. sworn states:-

I belong to the tpt sec. of 1st Cdn Para Bn and I drive a jeep for A. Coy. I have driven the same road as the accused many times and prior to the accident I observed no sign which in any way restricted my speed. No speed restrictions were given me by my superiors about reduction of speed on the particular road. I knew that the road on which the accident took place is under enemy observation, and if I knew a rd was under enemy observation I should go along it as fast as possible. This is the general understanding for driving procedure under such circumstances. The Staple Sign was hidden by a 15 cwt truck. I did not see the Staple sign until after the accident. I am of the opinion that this was due to the fact that a 15 cwt parked frequently in front of it. Also the sign was not advantageously placed for seeing.

X Examined.

The 15 cwt was parked in front of the sign. as I originally said. I do not know if the sign is in the same place as when the accident happened.

Court.

You could see under observation as soon as you pass the houses towards the Ablis farm. on the hill from which the Jeep was coming.

4th Witness. Capt Cawthy D.C. Chaplain to 1st Cdn Para Bn. sworn states:-

The accused, whom I was to recognise was a batman during home. I found him during quite satisfactory and he had no accidents. The accused during this period had conducted responsibility in so far as there were opportunities of drunkenness to which he been awarded frequently. He was often in the office and I always felt quite confident in his care of things there. Some nights he was in charge of the Church that alone and he always kept things in order. He was a willing worker always. Trying to do his job which was a difficult one.

Closing address for Defence

I wish first of all to point out with reference the charge sheet that it was through Sgt Williams's ignorance the one way sign that the accident occurred. Further he was sitting in a position where he could have warned his driver of and the approach of the accused's vehicle. This he did not do - which in my opinion is a further contributory factor to the accident.

With reference the accused driving too quickly it was proved as the general understanding of the Kpt Section that when under heavy observation it is necessary to increase speed to get out of that position. It was also proved that it was the understanding of the Kpt Section that the road was under heavy observation to the top of the knoll which is just beyond the cafe. Pte Faulkner therefore had every right to be driving at that speed - we have no evidence to say that he was not decelerating at the point of accident - but this point was so close to the area of heavy observation that such a decrease may or may not have been noticeable.

As regards the road sign "No Entry". The accused has been instructed that he must obey signs - ~~or he was prohibited~~ accident occurred has every right to expect that that a Mandatory Sign would be obeyed. The fact that a vehicle was approaching him is of no consequence to his charge because its being there is in direct contravention to the order of the road sign.

As regards the 5mph sign on the road - it has been shown by other members of the Kpt Section that the sign was so placed that passing driving on the road could easily overlook it. Therefore we must assume that there was not proper regulation of the road and the 5mph speed limit had no application in this case, even though the accused had been ordered to obey signs. He had no other orders with reference to speed on that road.

The accident occurred at a place sufficiently far back from the corner so that the accused could have stopped before he got to the actual corner. Thus he was not negligent in approaching the corner too quickly.

Closing address for the Defence (continued)

Lastly with reference to the character of the accused he was shown to be honest and reliable in the responsibility given him.

Closing address for the Prosecution

The defence have tried to prove that the accused was instructed to obey all road signs. The accused used the road as a two way road himself as was shown in evidence - he therefore disobeyed an order and has committed an offence. He had also used the road in both directions before the accident - he should have known the place of the accident was a danger point and as it was his duty to safeguard his own vehicle - regardless of enemy observation along that short road - he should have driven more slowly. He knew that he was driving downhill and was travelling at approx. 30mph himself and on account of the icy condition of the road I doubt very much if in the 40 yds from the point of accident to the corner he could have stopped. He knew the road was only wide enough for the passage of one vehicle at the point of the accident - he has been driving a military vehicle as far back as Sep. 44 and should have a knowledge of safe driving precautions. He did not have any orders to speed on that road and he did not have any direct order that the road in question was under observation. There is no evidence to show that the 15 cwt vehicle concealed the 30mph sign at the time of the accident - notwithstanding that 30mph was too fast a speed under such conditions. The court has visited the scene of the accident and knows that for 40-50 yds North of the scene of the accident the road declines towards the corner and therefore the sides of the road are above road level. It is therefore reasonable to deduce he would not be under observation at this point. The defence has stated that there was no evidence to show he was not decelerating at the time of the accident. He must therefore have been exceeding the speed limit if he was in fact decelerating

In view of the above facts I ask the court to uphold the charge of negligence against the accused - ✠

After finding(s) on charge(s) to which the accused pleaded NOT GUILTY

14. (a) If there are any findings of NOT GUILTY they are announced in open Court (RP 45).

(b) If there are any charges to which the accused has pleaded GUILTY

15. RP 37 (B) complied with.

16. Question : "Do you wish to make any statement in mitigation of punishment, give any evidence yourself, or call any witnesses as to character?".

Answer : The accused/Defending Officer {makes a statement(p....)) {hands in a written statement (marked.....)) {gives evidence himself (p.....)) {calls witnesses to character (p.....))

After finding(s) in ALL cases.

17 ..... (sworn) states:-
I produce AF B122 (examined and returned) and AF D296 (War) (marked....), which relate to the accused.

Cross-examination (see p.....).

18. Question to accused: "Do you wish to address the Court?"

Answer .....(see p.....).

The Court is closed for the consideration of sentence.

- - - - - - - - - - - - - - - - - - - -

R

I certify that the damage suffered by Jeep 5cwt 4X9 amounted to £200.

Wd No M5834646.
Note: Damage was such that the Vehicle had to be BLR.D

(Signed) R.G.Halliman, Lt.

EME

CERTIFY TRUE COPY.....
(J.A.Simpson) Capt
Adjt. 1 Cdn Para Bn. Officer having custody thereof

Army Form A2476
(Revised August, 1942)
To be carried in an addressed envelope by every driver.
A.C.I. 1312/1940
Cross out those words in ITALICS which do not apply.

WAR DEPARTMENT

TRAFFIC ACCIDENT REPORT

THIS SIDE TO BE COMPLETED AT SCENE OF ACCIDENT. IF SPACE IS INSUFFICIENT, WRITE ON BACK.

A. ACCIDENT

Date	Time	Place	Surname of Service Driver	No. of Service Vehicle
24-1-45	0910	Haelen, County Limburg	Pte Faulkner T. C 102 470	M5834646

B. OTHER VEHICLE (Lorry / Motor Car / Motor Cycle / Bicycle / Horse Van)

Make	H.P.	Registration No.	Name and address of Insurance Co.	Insurance Certificate No. or Policy No.
Morris	24	Z 5401933	N/A	N/A

C. DRIVER OF OTHER VEHICLE

Name	Driving Licence Date / No.	Address and Occupation	Telephone
Gnr Clarke 3316223		100 "R" Bty 100 AA Bde BLA.	

D. OWNER OF OTHER VEHICLE

Name	Address and Occupation	Telephone
W.D.	W.D.	

E. INJURED PERSONS State whether civilian or in Armed Forces. If the latter, give Service, number and Unit.

	Name	Age (approx.)	Address and Occupation	Telephone	Injury (Slight / Serious / Fatal)	Hospital (if known)
1.	Pte Faulkner T	20	Dr. 1 Can Para Bn. BLA	—	Slight / Serious / Fatal	N/A
2.					Slight / Serious / Fatal	
3.					Slight / Serious / Fatal	

F. WITNESSES Name, address etc., of every person present must be obtained.

	Name	Address	Telephone	Age approx.	Occupation
1.	Sgt Williams	100 "R" Bty 100 AA Bde BLA.	—	31	Forces
2.					
3.					

G. APPARENT DAMAGE TO OTHER VEHICLE (In greatest detail possible) — Can be seen at

Radiator - Bumper Bar + Towing Eye - Starting Handle - Headlamps damaged.

In Harbour

H. INJURY TO ANIMALS (Note any previous defects)

HORSE	COW	How many	LED / STRAYING	Condition	Injuries	If was not will not have to be KILLED	NAME & ADDRESS of OWNER or OCCUPIER	Telephone
POULTRY	PIG							
SHEEP	DOG					Property is NOT requisitioned		

I. DAMAGE TO PROPERTY

Nature of Property	Exact Location	Damage

J. POLICEMAN

Name	Police Station	He did NOT see accidents	A statement was NOT made to him	ROAD PATROL	Name	Association	Landlord / Tenant
No.						Branch	He did NOT see accident

K. LIGHTS

DAYLIGHT	Service Vehicle	Other Vehicle	WARNING	UNNECESSARY	NOT GIVEN BY ME	GIVEN BY OTHER
~~NIGHT~~	NOT ~~USE~~	NOT ~~USE~~				~~NONE~~

L. SPEED OF VEHICLE

Service	Other	BUILT UP AREA	Traffic LIGHT	ROAD SURFACES	DRY / ICE / WET	GOOD / FAIR / BAD / ICY	STRAIGHT / BEND / CROSS ROADS	TRAFFIC SIGNS	Visibility
30 m.p.h.	15 m.p.h.	~~NONE~~	~~NONE~~					No Traffic Signs	CLEAR / FOGGY / RAIN.

M. I GAVE THE ACCIDENT SLIP BELOW TO ~~Mr.~~ Sgt Williams 100 "R" Bty AA Bde BLA
Address

MAKE SKETCH ON BACK WHILE ON SCENE OF ACCIDENT

Instructions to Driver

(a) You must not admit liability by word or deed, or even discuss the question of blame, nor must the Service personnel with you.

(b) Should a Police Officer appear on the scene, await his permission before continuing your journey. If he requires the location of your Unit or a statement from you or any Service personnel, this may be given to him, but only to him and out of the hearing of any other person.

(c) Report the accident immediately on your return. If you have been unable to give the Accident Slip below to the other person involved or to a Police Officer, you must inform your Commanding Officer of this so that he may report the accident to the Police within 24 hours in accordance with Section 22 of the Road Traffic Act, 1930. If you are not returning to your Unit within 24 hours, report the accident to the nearest Police Officer or Station.

This Accident Slip must be given to the other person involved or to the Police Officer, if one appears on the scene

SERVICE DRIVER	Name	Rank	Number	Unit	Vehicle No.	Code	Insert here initials of Command
ACCIDENT	Date	Time	Place				

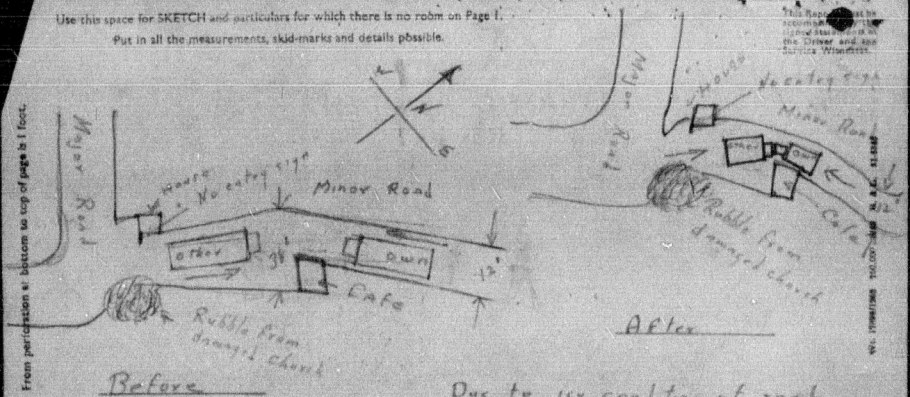
This slip is handed you for your convenience and is not to be taken as an admission of liability.

(Please Turn Over.

Use this space for SKETCH and particulars for which there is no room on Page 1.
Put in all the measurements, skid-marks and details possible.

This Report is the accompaniment to the signed statement of the Driver and the Service Witness.

From perception at bottom to top of page is 1 foot.



Due to icy condition of road there were no skid marks.

TO BE COMPLETED ON RETURN TO UNIT.

N. SERVICE DRIVER

Name in full (all Christian Names)	Number	Unit	Driving Experience Years	Mths.	Date of entry into Service	Age	Rate of Pay per day
Pte Faulkner, Thomas	C 102470	1 Cdn Para Bn	Civilian 2	—	13-7-41	20	3.03
Rank Civilian Occupation: Driver			Service 1	6			

O. SERVICE or HIRED VEHICLE

No. of Service Vehicle	Type of Bodywork	Load capacity	Make	H.P.	Right / LEFT HAND DRIVE	Present Location of Vehicle
M 38 46		5 cwt	Ford (Jeep)	54	LEFT HAND DRIVE	L.A.D.

If a motor-cycle, were all those on it wearing crash helmets? (See A.C.I. 2287/1941)

P. JOURNEY

Army Form G3518 was signed by — If none signed, reason must be given in Driver's Statement.

A.F.G.3518 Serial No. — Date

Journey: From Coy To R.H.Q.

Nature of Duty: To pick up trailer.

UNLOADED

Map reference of scene of accident: Sheet 32 (NE) 75 94

4 ins.

I declare that the above particulars and my signed statement are true in every respect. I hereby authorize the War Department if they so desire to instruct the Treasury Solicitor* to act on my behalf if any proceedings which may be instituted against me arising out of the above traffic accident. Further, I authorize the War Department and the Treasury Solicitor* to take such action as may be considered proper and generally to do what may be considered necessary in my interests by the Treasury Solicitor* in his capacity as my Solicitor and legal adviser. This retainer includes my authority to admit liability if deemed advisable at a later date, after the facts have been fully investigated by the Treasury Solicitor*.

*Or the War Department Law Agent in Scotland or the Chief Crown Solicitor for Northern Ireland, as the case may be.

Date 25 Jan 1945 Driver's Signature [signature] (This must be in Driver's handwriting, not typed).

Q. UNIT

Name	Address	Telephone	Unit's file reference	Command
1 Canadian Parachute Bn	B.L.A.	—	G4	1 A/B

R. HIRED VEHICLE See A.C.I. ..... para. .....

Hired through (R.A.S.C. Units)	Contractor's Name & Address / Telephone	Name & Address of Insurance Co. (if applicable)	Insurance Cert. No. or Policy No.	Rate of Hire per day

S. DAMAGE TO SERVICE or HIRED VEHICLE and/or LOAD CARRIED

Chassis - Radiator + Grill, Headlight - Bumper, Fender, Bonnet, Windshield, 3 Tires, Battery, Fan

(In grossest detail)

Will probably be repaired by :— work shop (Name of Repair Shop or Garage)

No. of Vehicles on charge to Unit: 32

T. I certify that the Service Vehicle was being driven

ON DUTY	NOT ON DUTY	Name of Officer who gave authority for issue of A.F.G.3518	NOT ON ITS AUTHORIZED ROUTE	Number of previous accidents in which Driver has been : concerned	to blame
		Maj Hanson		Nil	Nil

T.2. It is essential that A.D. Claims furnish me with

Police Report	Inquest Depositions	Statements of Injured Persons E.1	E.2	E.3	Statements of Witnesses F.1	F.2	F.3	A.D. Claims to arrange attendance at	COURT OF INQUIRY / INVESTIGATION	Place / Date / Time	Of injured E.1	E.2	E.3	Of Witnesses F.1	F.2	F.3

Put cross to those required. References are to Sections overleaf.

W. IT IS NOT INTENDED TO HOLD A COURT OF INQUIRY / AN INVESTIGATION.

Opinion of Officer commanding Unit as to responsibility (Only to be completed on copy sent to Higher Authority).

X. Punishment awarded

U. Signature of O.C. Unit

Date ..... 194 All copies should be signed and dated.

V. First Copy sent to A.D. Claims ..... Comd. on 194

Y. Second Copy sent to next Higher Authority, namely :

on 194

Z. Disciplinary Action Approved

..... 194

Signature of Brigade or other Commander

..... 194

Signature of Divisional Commander.

..... 194

Signature of Corps Commander.

Any correspondence concerning this accident should give all the particulars set out on the other side of this slip and be addressed to :— THE SECRETARY, CLAIMS COMMISION, WING HOUSE, PICCADILLY, LONDON, W.1. (In Northern Ireland to 3, Malone Park, Belfast).

Should any person have been injured, full particulars should be given together with the address at which the person could be examined if necessary.

Should a vehicle have been damaged, the following information should be given :—(i) the name and address of the Insurance Company ; (ii) number of the Policy ; (iii) whether this is comprehensive, third party only or Road Traffic Act liability only ; (iv) the amount of the excess (if any).

1945

while proceeding down one way street and approaching a blind corner changed down into 2nd gear to slow up on account of any road vehicle bearing U.S. No Z 5H 01973 suddenly appeared around blind corner. I immediately sounded horn but vehicle came on not giving right of way road was traveling between 15 & 20 M.P.H.

Received slight scrape wound and reported to Unit M.D.P. for attention

There were no injuries to personnel in other vehicle.

O-1027470 Lt Faulkner Thos

COPY

Army Form G1043
(Pads of 100)

ME/86/31
W. Indent No.....

R.A.O.C. WORKSHOPS REPORT ON STORES SENT IN
To officer commanding....Serial No. 135171
.....

With reference to your Workshop Repair Indent (A.F.G1045)No.....
dated.....,the stores mentioned below have been "conditioned" as
shewn, due to Fair Wear except as other wise stated

Catalogue No.	DESIGNATION	No.	CONDITION Beyond local repair	Uns.
	LV7/GPW			
	Ford 5 cwt 4 x 4 WD No. M5834646 Contract No. S/122275 Chassis No. 206603 Engine No. 206603 (Due to accident)	1	1	

1. (AF G1032 / (AF G1033 for these stores should be forwarded to the C.O.O./D.A.D.O.S.
.....,quoting this report as your authority.

2. If stores are required in replacement (AF G1032 / (AF G997 should be submitted
to the C.O.O./D.A.D.O.S.....with this report attached.

STATION: BLA .B.O..Holliwell..Lt.....
S.O.M.E.

DATE...24/1/45

CERTIFIED TRUE COPY..[signature]...CAPT.
(F.A. SIMPSON) CAPT,
ADJT I CDN PARACHUTE BN
Officer having custody of the original

STATEMENT BY 1076794, W/SGT WILLIAMS, A.E.

On 24 Jan 45, I was Sgt in charge of Al. Det. 100 Army Radar Bty, RA. I was ordered by my Tp. Comd. Lt. Phillips to accompany 3316723 Gnr. Clark, J. to WEERT in Morris 'T' Truck W.D.No. Z4501973 on that date. As some water was required in the cookhouse, I decided to collect some in jerricans on the way, a slight detour being necessary via HAELEN. Gnr. Clark was driving.

In the village of HAELEN, we approached a turning to the right, this turning being clearly marked "WARNING - NO ENTRY". As I believed the Water Point to be up this road. I instructed Gnr. Clark to turn up it. My reason for doing this was that I saw other vehicles turning up it in front of me and therefore assumed that the sign no longer applied.

About 40 yards from the junction, the road narrows to about 12 ft. the view ahead being obstructed by a cafe which juts out into the road. When almost level with the cafe and travelling at a speed of 12 - 15 mph we saw a Jeep about 6 yds away travelling towards us at a speed of about 30 mph.

It was impossible to swerve in either direction without colliding with the cafe on the right or a steep bank on the left and in any case there was no time. There was obviously insufficient room for the two vehicles to pass one another and Gnr. Clark applied the footbrake, the driver of the oncoming Jeep appearing to do the same thing. The road was covered with frozen snow and application of the brakes made very little difference to the speed of either vehicle and they therefore collided head-on.

I immediately instructed Gnr. Clark to switch off the petrol, which he did, and we made out an accident report on the spot.

I then instructed Gnr. Clark to walk back to Al site, which is near the scene of the accident and to fetch the 3 tonner to tow the damaged vehicle back to the site.

I then reported the matter to my Tp. Maj.

A Williams Sgt

Sgd. A. Williams, Sgt.
1076794.

CERTIFIED TRUE COPY OF ORIGINAL.....
(J.A. SIMPSON) CAPT.
ADJT I CDN PARACHUTE BN. CAN.

STATEMENT BY 3316723, GNR. CLARK, J.

I am a driver I.C. in Al Det., 100 Army Radar Battery, RA, and I normally driver a M 3 ton Fordson. I have been driving for 8 years including army service.
On 24 Jan 45. I was ordered to driver Morris 'T' Truck W.D.No. Z4501973 into WEERT where I had to attend for Dental Treatment. The reason why I was to take the 'T' Truck was that Thaw precautions were in force and 3 ton vehicles were not allowed on the road.
Sgt. Williams accompanied me on the journey and instructed ~~in~~ me to proceed via Haelen in order to pick up some water.
On entering the village of HAELEN we approached a turning to the right which was signed "WARNING, NO ENTRY". We had previously been informed by a civilian from whom we had made inquiries that the point at which we could collect water was up the road. We had both seen vehicles ahead of us turning up this road and I asked Sgt. Williams if it would be in order for us to do the same. He replied that as other vehicles were going up there, he presumed it would be all right.
I accordingly turned up this road where about 40 yards, up, there is a cafe jutting out on the right hand side obscuring ~~th~~ vision.
I approached this cafe in third gear at a speed of 10 - 15 mph and on drawing level with it, a Jeep suddenly appeared in view travelling at a speed of about 30 mph towards us. This speed was subsequently confirmed by the Jeep driver. The Jeep was about 6 yards away when I first saw it and there was no time to do anything but apply my brakes. Even had I swerved, I should have hit either the cafe on the right or a steep bank on the left. The Jeep driver obviously applied his brakes also as I could see that his front wheels were locked just before we collided. The road was covered with frozen snow and application of the brakes made little difference to our respective speeds. We collided head-on at a point just on the far side of where the road narrows, the front of the jeep hitting the offside of the 'T' truck.
I immediately switched off the petrol and ignition and started to make out the accident report. We had to push both vehicles into the wide part of the road in order to let other oncoming vehicles through. Vehicles continued to come through in both directions while we were there and there was no C.M.P. or other traffic control.
Sgt. Williams then instructed me to get the 3 tonner from Al site and the 'T' truck was towed away to the site.

J. Clark Gnr

Sgd. J. Clark, Gnr. 3316723.

CERTIFIED TRUE COPY.....
(J.A. SIMPSON) CAPT,
ADJT I CDN PARACHUTE BN, C.A.O.

CERTIFICATE OF COMMANDING OFFICER

I hereby certify that Lt P.G.Insole will replace a Captain detailed from this unit to sit on Field General Court-Martial on 16 Feb 45. I further certify that no Captain is available to serve.

13 FEB 1945
1st
CDN. PARACHUTE BATTALION

(J.A.Nicklin) Lt/Col
1 Cdn Para Bn BLA

H.Q.C. 55-F-866 CONFIDENTIAL

DEPARTMENT OF NATIONAL DEFENCE - OTTAWA, CANADA

SUBJECT

FIELD GENERAL COURT-MARTIAL

FAULKNER, JOHN HENRY F-1659[illegible]

CENTRAL REGISTRY	DATE	P.A. OR S.F.	INITIALS	REFERRED TO	FOR[illegible]	INITIALS	DATE
				(If purpose for which referred cannot be discerned on one line, enter here "With Minute")			2-12-46

CONFIDENTIAL
H.Q.C. 55-F-866

OVERSEAS COMBINED

NOTICE

1. This should be retained no longer than absolutely necessary. If a file is frequently needed at short intervals, it is better to [illegible] H.Q. 1 for two or three days than keep it out of General Registry indefinitely. This ensures it being completed and kept in order, and also gives other officers an opportunity to see same.

2. [illegible] should be posted up on a file to prevent [illegible] as another branch.

3. [illegible] should [illegible] the [illegible] be made.

PASS THIS FILE IN [illegible]

SCHEDULE.

PART I. PLEA(S), FINDING(S) AND SENTENCE.

Accused: F-16599 Pte John Henry FAULKNER RHC 10 CBR Bn

	Charge. (Insert "alternative" where applicable.)	Plea. (See Instrs p 2.)	Finding. (See note below.)	(Space for use as required for further charges, accused charged jointly, special findings, etc.)
1st	AA Sec 40	not Guilty	not Guilty	
2nd	AA Sec 41	not Guilty	Guilty	except damage was to broken leg.
3rd	AA Sec 40	not Guilty	Guilty	
4th				
5th				
6th				

(Note: As to findings for lesser offences see AA 56, RP 44; findings on alternative charges see MML p 483 fn 4 para 2, RP 44; special findings see RP 44 and MML p 753, and in loss of kit see RP 44 fn 6.)

At present under sentence for ..... beginning on (date) ..... (1) Nil

(1. Insert sentence being served, or delete, if not applicable. See RP 46(A). Information should be found on MF B355 or AF B296.)

Time in confinement awaiting present trial—a total of 29 days, of which Nil days were spent in hospital.(1)

(1. See RP 46(A) fn 2. Information should be found on MF B355 or AF B296 admitted in evidence under E2.)

Sentence Awarded by the Court:

To undergo 120 days detention.

(Sgd) [illegible] Judge-Advocate, if any. 14 Mar 45 Date awarded. (Sgd) [illegible] President. (RP 45, 50.)

(See back of Convening Order as to assembly and disposal of record after trial.)

PART II. MINUTE WHERE CONFIRMATION RESERVED. (AA 54(5), RP 120(F), MML p 760.)

Date ..... (Sgd) ..... Commanding .....

PART III. DECISION OF CONFIRMING OFFR ON FINDING(S) AND SENTENCE.

(For duties and powers see AA 54, 57, RP 37(D) fn 6, 46(A), 51-56, 120, MML pp 759-761, KR Can 567-577. Acquittals require no confirmation and cannot be revised: AA 54(3). Sending back finding or sentence for revision by Court: AA 54(2), RP 120(C). If not confirmed, accused may be tried again: AA 157, MML p 64. Minute of confirmation or non-confirmation may be altered before promulgation: RP 53, MML p 65. Quashing after promulgation: KR Can 573. Duties and powers of reviewing offrs: AA 57, 57A, RP 53A, 54. The Confirming Offr must sign here personally. AA 172 fn 1.)

My decision on the finding(s) and sentence set forth in Part I is: Confirmed

I direct that the accused be not committed to prison or detention barracks until further orders.(2) (1. AA 57A. Delete if not used.)

(Sgd) [illegible] Brig 2 CBRG

Date 16 Mar 45 Commanding 2 CBRG Confirming Officer.

PART IV. PROMULGATED AND EXTRACTS TAKEN. (RP 53, KR Can 576, 577.)

Accused.	Date.	Signature of Offr.
F-16599 Pte John Henry FAULKNER RHC 10 C B R Bn.	16 Mar 45 20 Mar 45	[illegible] A/a/Maj 10 C B R Bn.

ALL DELETIONS AND ALTERATIONS WILL BE INITIALLED.

RECORDED AT CMHQ IN AB 160 5D-13

CFA96 (in lieu of AFA31) 40/P & S/1698 (40050) 4/38B

FIELD GENERAL COURT-MARTIAL

Convened by Order of Brig G S N Gosling, ED Comd 2 CBRG dated 12 Mar 45

ACCUSED.

(As to the trial of two or more charged jointly see RP 16, 71, 109. As to reasons for showing (a) permanent or confirmed and (b) appmt, A/rank or A/appmt, if any, see AA 182, 183, fns, KR Can 308, 328, 330.)

Number.	(a) Prmnt R.	(b) Appmt, A/R or A/Appmt.	Full Christian Names.	Surname.
F-16599	Pte		John Henry	FAULKNER

PROCEEDINGS REVIEWED [illegible] 17 April 45.

PROCEEDINGS OF TRIAL.

Held at [illegible] in (country) BELGIUM on (date(s)) 14 Mar 45

RECORD FORM A—OPENING PROCEEDINGS AND ARRAIGNMENT. 26(37-

A1. The President, Members, waiting Member, JA, if any, and Offrs under instr, if any, assemble, and the Court is closed.

(PRINTED MATTER, NOT IN ITALICS FOR GUIDANCE, WILL BE DELETED, IF NOT USED OR APPLICABLE, AND INITIALLED BY PRES OR JA. The Schedule referred to throughout is on p 4. Citations do NOT include all relevant fnnn ROs. For guidance on procedure when a variation in this form arises, see form for GCM in MML pp 741 to 759. A brief record of such variation will be made and given a number having reference to appropriate or preceding para number herein. See back of Convening Order, CF A95, for oaths and instrs on how to record addresses, evidence, etc, which instrs are hereafter called "Notes". As to general provisions for conducting the trial see AA 53, RP 56, 63-70, 73, 74, 94, 103, 119, 132.)

A2. The President initials and lays before the Court the Convening Order and Charge Sheet(s) attached thereto.(1) The Court is satisfied that it is properly convened and constituted(2), accused is (are) amenable to military law, and each charge discloses an offence.(3)

(1. As to use of Summary of Evidence see RP 17 fn 6. 2. AA 49, 50, RP 105-107. 3. RP 11-13, 23, 24.)

A3. The Court is opened. The accused is (are) brought before the Court. At 1000 hours trial commences.

A4. The Prosecutor produces a Medical Certificate that accused is (are) fit to undergo trial by court-martial.(1) ~~The Prosecutor informs the Court that accused elected to be tried by court-martial instead of being dealt with summarily by the CO.(2)~~

(1. KR Can 557. 2. AA 46(8), RP 60 fn 1. For effect see KR Can 563(c). Delete, if not applicable.)

A5. President to accused: Do you object to M 60043 Pte H. RADSTAAK as interpreter? Ans No

~~The Interpreter is sworn.(1)~~ Do you object to ..... as shorthand writer? Ans .....

~~The shorthand writer is sworn.(1)~~

(1. RP 72. Delete, if none employed.)

A6. The Convening Order and names of the President and Members of the Court are read to the accused.(1) President to accused: Do you object to be tried by me as President or by any of the Members of the Court?

Ans No (2)

(1. RP 110. 2. If no objection, waiting member retires. RP 68(B). If objection, see procedure AA 51, RP 25, 71, 18, MML p 742.)

A7. The President, Members, JA, if any, and Offrs under instr, if any, are sworn.(1) The following are the ranks, names and units of the offrs comprising the Court, etc:

President	Major	G G MacKENZIE MBE	FGH X-9 List 3 Cdn NETD
Member	LIEUT	V.J. OUELLETTE	C/C 10 C.B.R. BN
Member	LIEUT	N.E. JENETT / N.H. CHATE	C/C 11 C.B.R. BN
Judge-Advocate	LIEUT	G.E. COLLINS	LEGAL OFFICER, NO. 2 CDN ARMY TROOPS
Prosecutor	LIEUT	N.H. CHATE	C/C 10 C.B.R. BN
Defending Offr	LIEUT	L.R. WILSON	C/C 10 C.B.R. BN

Questions by President: Is the Prosecutor a lawyer? Ans No Is the Defending Offr a lawyer? Ans No (1)

(1. RP 26, 27, 109, 111. List of offrs under instr will be returned separately with proceedings for information of Conv Offr.)
(2. If Pros a lawyer and Def Offr not, accused is entitled to an adjournment when RP 89 (B) and fn 2 were not followed. See Dft p 2.)

A8. The accused F-16599 Pte FAULKNER J H before arraignment make(s) (no) (1) plea

(1. If a special plea is made for separate trial on one or more charges (RP 62(E), 108), or as to the jurisdiction of the Court (RP 34, 35(A), 113), or in bar of trial (RP 36), or as to accused's mental fitness to stand trial (AA 130, RP 57), or by one of several accused charged jointly to be tried separately (RP 16, 71), such plea, the addresses made in support or against, the evidence, if any, and finding are recorded per Notes. For forms of record see references in fns to RsP cited. Insert in A8 rank and name of the accused making the plea.)

A9. The accused is (are) arraigned (separately) on all charges in the charge sheet.(1) The accused does (do) not object to any charge.(2) There is no amendment to be made to the Charge Sheet.(3) The President records the pleas in Part I of the Schedule.

(1. RP 31, 112. See para 1 of Instrs p 2. When more than one Charge Sheet see RP 62; when several accused to be tried separately see RP 71(C), and use separate copies of CF A96 to record proceedings. 2. RP 32, RP 33. If otherwise, delete and make appropriate record per Notes.)

A10. The Court (is closed and) considers the Instrs on Procedure after Arraignment at top of p 2. The proceedings are continued on Record Form 2 A

PRESIDENT OR JA WILL INITIAL ALL DELETIONS AND ALTERATIONS. 37.

2 CBRG. Vols. P.A.

INSTRUCTIONS ON PROCEDURE AFTER ARRAIGNMENT.

1. *The accused may not plead or be found Guilty on more than one of two or more charges laid in the alternative.* (*RP* 37(*A*).) *As to withdrawal of alternative charges by Prosecutor see RP* 35(*C*). *No other charge can be withdrawn for any reason without authy from Convening Offr. If Convening Offr concurs, Court may accept plea of Guilty to lesser, etc, offence.* (*RP* 44(*H*).) *Accused may change a plea of Not Guilty to Guilty during trial.* (*RP* 38.) *As to refusing to plead or not pleading intelligibly see RP* 35(*A*). *As to plea when sentence may be death see RP* 35(*D*).

2. *The proceedings on each charge sheet* (*RP* 62) *after arraignment will be conducted as follows in the respective circumstances stated:*

I. If pleas to all charges are GUILTY, use Record Form B below.

II. If pleas to all charges are NOT GUILTY, use Record Form D on p 3.

III. If pleas to some charges are GUILTY and to other charges are NOT GUILTY and,

(a) Such mixed pleas occur when there are no alternative charges in the Charge Sheet, use Record Form C below. (*RP* 37(*A*).)

(b) Such mixed pleas occur in a set of two or more charges laid in the alternative, see RP 37 (*A*) *and fn* 2 *as to discretion of Court.* (i) *to try the accused on all such alternative charges as if he had pleaded Not Guilty thereto, or,* (ii) *to record the pleas as the findings of Court. After deciding between* (i) *and* (ii), *Court will proceed under foregoing instrs as may be appropriate to result of its decision. See MML p* 744 *Instrs* (2).

3. *As to responsibility of President to accused see RP* 59, 60(*C*); *powers and duties of JA see RP* 103; *duty of Prosecutor see RP* 60(*A*) (*B*); *duty and privileges of accused and Defending Offr see RP* 60(*C*), 87(*C*), 91, 92; *swearing and withdrawal of witnesses from Court see RP* 81, 82; *questioning of accused see RP* 80, 87(*C*), 92(*B*), *and of witnesses see RP* 83-85; *calling or re-calling of witnesses by Court, etc, see RP* 75-79, 86, 116; *use of Summary of Evidence at Trial see RP* 17(*E*) *fn* 6; *and responsibility of JA or Pres to record proceedings see RP* 94, 96.

RECORD FORM B—PROCEEDINGS ON PLEAS OF GUILTY TO ALL CHARGES.

B1. The President or JA, if any, complies with RP 35(B) by explaining to the accused the nature and meaning of the charge(s)(1), and that on his plea of Guilty there will be no regular trial but merely a consideration of the sentence to be awarded after he has been given an opportunity to make a statement in reference to the charge(s), call witnesses as to character and make an address in mitigation of punishment.(2)
(*1. RP 35 fn 3. 2. MML p 54 para 47.*)

B2. President to accused: The Court will now receive any statement you desire to make in reference to the charge(s).(1) If it appears from your statement that there are circumstances which indicate that you do not understand the effect of the plea of Guilty(2), or which show provocation or extenuation in respect of which in your interest the witnesses for the Prosecution should be examined(3), we shall advise you to change your plea to Not Guilty. In making a statement you will not be sworn or subject to cross-examination; and anything you say will not be used in evidence against you after you change your plea. If, however, it appears to the Court that your statement affects only the amount of punishment to which you are liable, you will not be advised to change your plea and you will be given an opportunity later to prove your statement by sworn testimony, if you so desire.(4)

President to accused: Do you wish to make a statement? Ans.....(5)
(*1. RP 37(B). 2. RP 37(D) fn 6. 3. RP 35(B) fn 5 para 3, MML p 54 para 47. 4. See para E3 of Record Form E. 5. Statement, if any, recorded per Notes.*)

B3. The Court considers the accused's statement.(1) The Court decides (not) to advise accused to change his (their) plea(s) of Guilty to Not Guilty on.....charge(s). The accused is (are) so informed, and he (they) change(s) his (their) plea(s) on.....charge(s). Part I of the Schedule is amended accordingly.
(*1. Court may be closed to consider the statement. Delete whole or part not used.*)

B4. On the charge(s) to which the plea(s) of Guilty is (are) not changed the President records finding(s) of Guilty in Part I of the Schedule.(1)
(*1. RP 35(B). If any plea(s) is (are) changed, use Record Form C or D as appropriate.*)

B5. The Summary of Evidence is marked Ex....., initialled and read aloud by the President.(1)
(*1. If there is no Summary, or if it is inadequate, comply with RP 37(B). If there is any evidence inconsistent with any plea standing as Guilty, Court will advise accused to change such plea and, if changed to Not Guilty, try such charge(s) by use of paras D1 to D8 inclusive of Record Form D on p 3. RP 37(D).*)

B6. The accused having been found Guilty on one or more of the charges, the proceedings are concluded by using Record Form E on p 3.

RECORD FORM C—PROCEEDINGS ON MIXED PLEAS OF GUILTY AND NOT GUILTY.

C1. As to the charges on which accused pleaded NOT GUILTY the trial is continued by using paras D1 to D8 inclusive of Record Form D on p 3 before proceeding with C 2.(1)
(*1. RP 37(A) (E).*)

C2. The charges on which accused pleaded GUILTY are read to him (them) again, and the trial is continued by using paras B1 to B5 of Record Form B above.(1)
(*1. Under B5 such parts only of the Summary of Evidence are read as relate to the charges dealt with under C2. If any plea is changed to Not Guilty, trial thereon proceeds by complying with paras D1 to D8 inclusive in Record Form D on p 3 and making an appropriate record thereof on a separate sheet.*)

C3. The accused having been found Guilty on one or more of the charges, the proceedings are concluded by using Record Form E on p 2.

PRESIDENT OR JA WILL INITIAL ALL DELETIONS AND ALTERATIONS.

Fix here Loose Sheets of Record.

RECORD FORM D—PROCEEDINGS ON PLEAS OF NOT GUILTY TO ALL CHARGES.

D1. President to accused: Do you wish to apply for an adjournment on the ground that any of the rules relating to procedure before trial have not been complied with, and that you have been prejudiced thereby, or on the ground that you have not had sufficient opportunity to prepare your defence? Ans. no (1)
(*1. If "yes", see RP 39(A) for procedure. Statement or evidence, if any, is recorded per Notes.*)

D2. The Prosecutor makes (an) (no) opening address.(1)
(*1. RP 39(B), 60(A) (B), 90. 92(C) (D). Record address per Notes, subject to RP 95(C).*)

D3. The evidence for the Prosecution is taken.(1)
(*1. RP 39(C), 114, KR Can 555. Record evidence per Notes. As to Prosecutor giving evidence himself see RP 39(D) (E).*)

D4. The Prosecution is closed.(1) ~~The Defending Offr submits that the evidence for the Prosecution does not establish a prima facie case against~~ the accused on the.....charge(s).(2) The Court is closed, and considers the submission.(3) The Court is re-opened, and the President announces that the submission is disallowed on the.....charge(s), and allowed on the.....charge(s), and that, ~~accordingly, the trial will~~ proceed on the former, but the accused is (are) found Not Guilty on the latter charge(s).(4)
(*1. Delete remainder of this para, if submission not made. 2. Arguments on submission, answer and reply are recorded per Notes. 3. RP 40 fn 1. See MML p 72 paras 12-14 and p 81 para 42. 4. Delete part not used. If accused acquitted on all charges use second alternative in para D8.*)
NB: If trial proceeds, accused must be allowed great latitude in making his defence, and the Court should not stop his defence solely on ground of irrelevance. (*RP 60(C), 114, 115.*)

D5. President to accused: You will now proceed with your defence.(1) You may, if you wish, give evidence yourself on oath as to the facts or your character or both, in which case you will be subject to cross-examination.(2) You may, however, make a statement without being sworn, and you will not be subject to cross-examination.(3) But a statement which could have been made on oath will not carry with the Court the same weight as sworn testimony.(4) You may call witnesses in your defence and as to character, whether you give evidence or make a statement or do neither.

President to accused: Do you wish to give evidence yourself as a witness, make a statement, or do neither?
Ans. Yes as Witness Do you intend to call witnesses on your behalf?
Ans. No Are they witnesses as to character only? Ans. Yes
(*1. RP 115. 2. RP 40(A), see 80(D). 3. RP 40 fn 10. 4. RP 40 fns 2, 9.*)

D6. Consequent on the answers recorded in para D5 the appropriate procedure for the defence is followed.(1)
(*1. RP 114, 115, 116. For procedure see Notes on back of Convening Order, CF A95. Evidence for accused as to his character should, if in his interest, be given before the finding. See RP 46(A) fn 1, 86(C). Note the further opportunity in para E1 of Record Form E. Record per Notes addresses, statement, evidence and any summing up by the JA under RP 42, 103(e).*)

D7. The Court is closed to consider the finding(s).(1) The finding(s) of the Court is (are) recorded in Part I of the Schedule.(2) The Court is re-opened.
(*1. RP 43, 117(A). See Notes in Part I of Schedule. 2. RP 44(A).*)

D8. The President announces the finding(s), if any, of Not Guilty, and states to the accused that the finding(s) of the Court on the Second & third charge(s), being subject to confirmation, will be promulgated later.(1)
Or, ~~The President announces that the accused is found Not Guilty on all charges and is to be released forthwith, and that the proceedings are accordingly terminated. Part I of the Schedule is dated and signed.~~(2)
(*1. AA 54(3) (6), RP 45, 120(A). 2. AA 54(3), RP 45, 117. This alternative announcement is not applicable when there are pleas of Guilty outstanding and dealt with under Record Form B or C.*)

D9. The accused having been found Guilty on one or more of the charges, the proceedings are concluded by using Record Form E below.

RECORD FORM E—PROCEEDINGS ON CONVICTION BEFORE SENTENCE.

E1. President to accused: Do you wish to give evidence yourself or to call any witnesses as to your character?(1)
Ans. no
(*1. If evidence has already been given by accused or his witnesses as to his character, delete this para. RP 37(C) fn 4, 46 fn 1. Accused and witnesses are sworn. Evidence recorded per Notes.*)

E2. The Prosecutor produces Statement(s) as to Character and Particulars of Service(1), and certified true ~~copy~~ (copies) of Conduct Sheet(s)(2), purporting to refer to the accused, which he submits to the Defending Offr for examination, and then to the Court for admission in evidence. The Court is satisfied that these documents refer to the accused, because (i) they purport to be signed in the manner required by AA 163(l) (g) (h), and (ii) they purport to refer to (a) soldier(s) having the same number, rank, name and corps as the accused. Admitted in evidence and marked Ex. A. and Ex. B respectively.(3)
(*1. MFB 355 or AFB 296. 2. MFM 6. 3. RP 46, KR Can 558. If above documents not produced, see RP 46 fn 1 para 1.*)

E3. President to accused: Do you wish to address the Court on the Statement(s) and Conduct Sheet(s), and in mitigation of punishment?(1) Ans. Yes E3.(2)
(*1. RP 37(C), 46(D). 2. Address, if any, recorded per Notes. Court should permit accused or his witnesses to prove on oath anything here or previously stated which would affect the amount of punishment. RP 37(F) fn 7.*)

E4. The President states that the Court is closed to consider the sentence, and that the sentence to be awarded by the Court, being subject to confirmation, will not be announced, but will be promulgated later, and the proceedings in open court are accordingly terminated.(1)
(*1. AA 54(6), RP 120(A).*)

E5. The Court considers the sentence.(1) The President records the sentence in Part I of the Schedule, which is dated and signed by him and the JA, if any.(2)
(*1. When several accused tried separately see RP 71 (D). One sentence only, comprised of the punishment or punishments laid down in AA 41, 44 and its proviso, is to be awarded to cover all charges in all charge sheets on which accused found guilty. RP 48. As to sentences see AA 44, 138, 182, RP 46-50, 69, 118, 119(A), KR Can 308, 330, 563-566, Overseas RO 309, 2323, MML p 60, 757-759. As to sentences assigned for civil offences by the law of England see AA 41(5), MML p 130. When accused already under sentence of imprisonment or detention see AA 44(i)(b), 68(1), KR Can 564. 2. RP 50. As to release from arrest by Confirming Offr see KR Can 567. As to assembly and disposal of record after trial see Instrs on back of Convening Order.*)

PRESIDENT OR JA WILL INITIAL ALL DELETIONS AND ALTERATIONS.

CHARGE SHEET

The accused F-16599 Pte John Henry FAULKNER (R.H.C.) on the strength of 42 Coy 10 CBR Bn, a soldier of the Cdn Army Overseas.

is charged with

FIRST CHARGE
A.A. Sec. 40

WHEN ON ACTIVE SERVICE, CONDUCT TO THE PREJUDICE OF GOOD ORDER AND MILITARY DISCIPLINE.

in that he

In the Field at 1340 hrs, 14 Feb 45, became unfit for duty by reason of previous indulgence in alcoholic stimulants.

SECOND CHARGE
A.A. Sec. 41

WHEN ON ACTIVE SERVICE, COMMITTING A CIVIL OFFENCE THAT IS TO SAY COMMON ASSAULT.

in that he

In the Field at about 1400 hrs, 22 Nov 44, assaulted Mr. De Vos GUILLAME, of GHENT, by taking hold of his shoulder and forcing him down the cellar stairs of his house causing damage to his artificial leg.

THIRD CHARGE
A.A. Sec. 40

WHEN ON ACTIVE SERVICE, CONDUCT TO THE PREJUDICE OF GOOD ORDER AND MILITARY DISCIPLINE.

in that he

In the Field at about 1400 hrs, 22 Nov 44, was concerned in a disturbance at the house of Mr. De Vos GUILLAME, of GHENT, by using a ladder to force an entrance, going through the rooms of the house and doing damage in the amount of 350 francs.

.....
(J. RUNCIE) Lt.-Col.,
O.C., 10 C.B.R. Bn.

In the Field
26 Feb 45

TO BE TRIED BY FIELD GENERAL COURT MARTIAL.

(G S N Gostling) Brigadier
Commander
2 Cdn Base Rft Gp

In the Field
12 Mar 45

~~APPROVED ON BEHALF OF THE JUDGE ADVOCATE GENERAL pursuant to KR (Can) 540.~~

~~(R.A. Hanson) Capt~~
~~ADJ~~
~~HQ 2 Cdn Base Rft Gp.~~

In the Field
12 Mar 45

FIELD GENERAL COURT-MARTIAL

(Whether the accused to be tried is under his comd or not, a FGCM may on application to him be convened by any offr of Cdn Army Overseas, or of any other force if authorized in law, in immediate comd of troops on active service, subject to RP 105(C) and restrictions imposed by appropriate authy. AA 49, 50, RP 104-107, 114. As to the duties and privileges of the Convening Offr in dealing with the application see MML Chap V paras 20 and 23, RP 87(B).

There should be a separate Convening Order for each person to be tried separately by the same Court. RP 71(C), 109. As to separate charge sheets see RP 62, and as to separate trial on charges in the same charge sheet see RP 106. As to two or more accused charged jointly see RP 16, 109.

As to reasons for showing (a) permanent or confirmed rank, and (b) appmt, A/rank or A/appmt, if any, see AA 182, 183, fns, KR Can 308, 328, 330.)

ACCUSED.

Number.	(a) Prmnt R.	(b) Appmt, A/R or A/Appmt.	Full Christian Names.	Surname.	Unit.
F-16599	Pte		John Henry	FAULKNER	R H C 10 CBR Bn

CONVENING ORDER.

1. Whereas complaint has been made to me, the undersigned, that the person(s) named above as the accused, being subject to military law, has (~~have~~) committed the offence(s) set forth in the Charge Sheet(s) attached and on (*date*) 12 Mar 45 endorsed by me, ~~(or by an offr of my staff for me)~~, " To be tried by Field General Court-Martial ".

2. And whereas I am of opinion that it is not practicable that such offence(s) should be tried by an ordinary General Court-Martial ; ~~(and that it is not practicable to delay the trial for reference to a superior qualified offr.)~~

(Delete part in brackets when not required for compliance with RP 105(C).)

3. I hereby convene a Field General Court-Martial to try the said person(s), and to consist of the Offrs appointed or detailed hereunder.

~~4. I am unable to appoint (a) three Offrs to form the Court, (b) a Fd Offr as President, for the reasons I have attached hereto.~~

(AA 49, RP 106(B), 107(A). Delete the whole or part, if not applicable.)

5. I also appoint as Judge-Advocate thereat the Offr mentioned hereunder.

(RP 106(E). Delete, if none appointed.)

PRESIDENT.

(Rank.)	(Must be named. RP 106.)	(Unit.)
Major	G G MacKENZIE MBE	FGH X-9 List 3 Cdn NETD

MEMBERS.

(Rank.)	(Named or detailed. RP 106.)	(Unit.)
Capt or Lt	to be detailed by OC 10 CBR Bn	10 CBR Bn
Lt	to be detailed by OC 11 CBR Bn	11 CBR Bn

WAITING MEMBER.

(Rank.)	(Named or detailed, if any. RP 106.)	(Unit.)

JUDGE-ADVOCATE.

(Rank.)	(Must be named, if any. RP 106.)	(Unit.)
Lt	G. COLLINS ~~Andr SCOLLSTONE~~	Legal Offr att HQ 2 CBRG(ADJA)

On Active Service in the Fd

in BELGIUM (Country.)

(Signed personally. RP 105 fn 2.)

Brigadier (Rank.)

(G S N Gostling)

Dat 12 Mar 45

Commanding 2 Cdn Base Rft Gp

Convening Officer.

CONVENING OFFR WILL INITIAL ALL DELETIONS AND ALTERATIONS

4/38A CFA 95 (In lieu of AFA B) 40/P&S/1007 (8145) (See overleaf for oaths and notes for use on trial.)

On behalf of the JAG, Cdn Army Overseas I approve the appointment of Lt ~~Andr SCOLLSTONE~~ as Judge Advocate, the said Lt ~~SCOLLSTONE~~ COLLINS having legal qualifications.

(H A HANSON) Capt
ADJA 2 CBRG

Medical Officers Certificate

I certify that I have this day examined A166599 Pte Faulkner J.H.

_____ and in my opinion he is fit/~~unfit~~ to undergo trial by Court Martial.

Station _____

Date 14/4/45

Medical Officer

R.C.A.M.C.

Unit

Prosecution

1st Witness: D-56 228 Sgt. Le Guerrier J. L. - identified accused; - at 1330 hours 13 Feb 45 notified accused to remain in his quarters as he would be called for clearances through the MO, DO and Q stores.
At 1330 hrs 14 Feb 45 I sent runner to accused's quarters to get him. At that time as a result of information received over the telephone I made a special point of waiting for the accused in 42 Coy orderly room.
Accused entered orderly room at approx 1340 hrs. and he was under the influence of liquor. I had called this man to tell him that he was proceeding on draft and he was to attend a parade for that purpose.
He was unsteady on his feet and in my opinion under the influence. I placed him under close arrest and escorted him to the guard room where I obtained a live body receipt.

Cross examined by D.O.

Q Why did you send for accused?
A. I wanted him to report to me to proceed on draft
Q. Do you say that he was unfit for parade
A Yes sir - he was unfit for parade.
Q Why did you consider him unfit?
A He was unsteady - I considered him to be under influence of alcohol. He was too unsteady to allow on parade.

Questioned by court

Q How did he come to the orderly room
A He was able to walk under his own power. He was a bit unsteady on his feet.

RP #32 complied with
Sl Hoskins

2nd Witness. A-103180 L/Cpl Hanley W.F.-

Identified accused.

On 22 nov 44 accompanied by L/Cpl Forbes, as a result of information received I proceeded to a civilian home in Ghent, I forget the address, to pick up two Canadian soldiers.

On arriving at the house I saw that the door was smashed. A panel was broken in. I went down to the cellar. I saw one Canadian soldier at the foot of the steps. I went into the kitchen where a soldier whom I now know to be Pte Faulkner was talking to a civilian. I told Faulkner to accompany me to detention which he did. I later brought him to the same civilian home where statements were taken from the civilians. I think there was a woman in the house when we got there. Cellar and kitchen are both downstairs. Passageway leads from cellar to kitchen. I recognize the civilian by his face. He is a witness here today. I could smell liquor on his breath (accused's). He walked alright. no trouble to get him away from house.

Cross examined:

Q Did accused put up any argument when arrested

A He gave no argument

Q what damage was done

A - Panel of door, about 3' x 3' smashed in.

RP 83 Completed

SS Hanley W

3rd Witness. Mr. Denis Guillame. 8 Kaltenhofstr. Ghent. sworn
2d testifies accused - 22 Nov 44 at 1330hrs approx I heard banging on door of house. I was in kitchen; I went to front door to see; The house belongs to a Mr. Rolland; I saw a soldier arguing with a man who was working at the house door. The accused hit the man who was working at the door and the man tried hold of the accused and led him to the corner of the street. The workman came back, came inside the house and closed the door; The accused came back with another soldier. There was a ladder standing at the door which they took and banged the door in with it. The workman ran upstairs. I had to open the door. Accused then took hold of me. I had to go with him into all the rooms downstairs. We then had to go to the coal cellar. I told him I could not go. He took hold of my shoulder and pushed me in. At the bottom step I fell. Accused came down and helped me upstairs again. When we arrived upstairs the police were there; after door banged open, accused standing there with ladder in his hand; when I fell at bottom step my leg brace was damaged; accused was drunk - because he was swaying from side to side; Damage to door amounts to 350 francs.

[redacted]

Q What was workman doing at front door?
A. He was putting a pane of glass in above the door.
Q When did you first see accused?
A At the door - inside.
Q Door open?
A. yes.
Q. Did accused push workman?
A yes.
Q How did he push
A with his hand.
Q. who was banging at the door
A - one of the two soldiers.
Q Did accused want to go downstairs
A. I could understand that he wished to go downstairs

(over)

(Guillaume)
Q did you want to go with him
A - I had to.

Cross examined -
Q did the soldier have hold of ladder too?
A - no - he did not
Q why did accused want to go thru rooms?
A - to find the other man
Q Did accused just lay hand on your shoulder
A - yes - he did not hit me -

President -
Q where was accused when you fell down?
A - I was down below, he was above
Q where is hatchway
A - seven steps down on one side, coal cellar is beside it.
Q Did you hurt yourself
A - my apparatus was broken (witness shows leg brace)
Q accused been drinking
A - he was drunk
Q why do you say he was drunk
A he was swaying from side to side

Judge Adv.
Q In what manner did accused put hand on your shoulder
A - He seized me by shoulder in unfriendly way (witness illustrates by grabbing his shoulder in squeezing grip)
Q Did he force you down cellar
A - He made me go down - I had to go -
Q Do you often go down those stairs
A - I never use the stairs - I cannot
Q - Do you gentlemen
A - yes - I am let upstairs RP 8 3/4 complied with

Stipulation

Fourth Witness - Mr. Geo. Porter 19 Van Voorhemst St. -
Sgt - identifies accused as soldier who was
drunk and singing on street while I was putting
window in door top at 8 Kalkenburg St on one
November day at approx 1230 hours. I was busy
and heard singing and hollering and saw two
drunken soldiers. They went into a corner cafe
and came out again in a minute or two. They
crossed the street. I went inside to cut some glass.
I heard someone calling and went out and saw accused
calling a 14 yr. old boy. Accused then started
talking to me - I couldn't understand accused
was angry, because I couldn't understand.
Other went in to door and he came with me -
I tried to make him understand it was not a
cafe'. accused started to shout; he went away
and came back with another man. They
barged in the door with my ladder. I fled
upstairs; I did not see Denor talking with
accused;

Cross exam. Did you see accused barge door
in? A. As soon as door broke inward I ran
away upstairs.

Q why do you say accused drunk?
A. he was urinating in street - he was very drunk.

RP 83(2) complied with
Accused

Prosecution closes case.

1

Defence

Accused - F-16599 Pte Faulkner J.H. sworn - states:

I was drinking in a cafe on 22 Nov 1944 - I don't know the location; I had a number of drinks that morning with a friend; On leaving that cafe I went to another cafe and all I can recall after that is talking to a civilian man. I could not say where. I don't remember causing any disturbance. I woke up in the guard room on 23rd Nov. - feeling sick. went on sick parade - placed under open arrest by adj. 11 Bn. then went to Sick Bay. Didn't know I had committed any offence until January when I received charge while in 2 Can Gen Hosp - I had diphtheria - heard then I had rocked a crippled woman - Tried since to recall that day but I cannot do it.

I was put under arrest for the whole day that day in orderly room - 14 Feb 45. I could have been able to go on parade by myself.

no cross exam.

President - On 22 Nov. - do you remember going to the guard room -

A. - I don't remember going from Provost office to guard room - I have a slight remembrance of getting out of a jeep -

SP 83(2) complied with

Released

Closing Address Prosecution

On the first charge the prosecution has proved that the accsd was unfit for duty due to previous indulgence in alcoholic stimulants by the testimony of the 1st Witness. The accsd was required for a parade & when he appeared Sgt ~~Lafrenier~~ considered him unfit for duty because he was under the influence of liquor.

On the ~~second~~ third charge the third witness heard the door of his house being knocked in and when he opened it he saw the accsd standing there with a ladder which he had used as a ram. This proves that the accsd ~~did~~ was concerned in a disturbance at approx 0130 hrs. 22 Nov 44. ~~He~~ and did damage to the extent of 35 francs to the door of the house of Mr De Vos.

On the second charge Mr. De Vos ~~states~~ that the accsd grabbed him by the shoulder & forced him down the stairs. In ordinary circumstances it would be difficult for Mr De Vos, a cripple, to go down the stairs. By reason of the fact that he was forced to go down & due to the excitement ~~and~~ he was afraid ~~and~~ fell and damaged his leg brace. The accused therefore must be considered guilty of common assault as he forced Mr. De Vos to do something against his will by grabbing him by the shoulder & forcing him down the cellar steps.

~~Accsd~~ Asst Prosecutor

14 Mar 45

Summary for the Defence
in the case of

F-16599 Pte John Henry Faulkner

Mr President and Members of the Court,

On the first charge the only evidence that the accused was under the influence of liquor was that he was a little unsteady on his feet. That proves nothing because he may have been ill and slightly dizzy and been a little unsteady on his feet. The real reason he was placed under arrest was because of a message from the O.C.

On the second charge the witness Mr. De Vos says the accused was not with him when he fell out at the top of the stairs so his fall was an accident. The accused was drunk and took hold of his collar, probably to steady himself, and must have swung towards the stairs because that was the only way he could convey anything to the civilian. Mr De Vos must have thought he meant for him to go downstairs although the accused may only have meant he wanted permission to go down to look for Mr. Porter. Mr. De Vos's statement about being pushed is impossible because he also stated the accused had hold of the front of his collar from which position it would be impossible to push him. The accused helped the civilian when he fell and did not wish any

was he responsible for him falling.
No one saw the accused break in
the door but M. De V. says he saw the
accused with the ladder after it was broken.
This proves nothing as the accused may
have taken the ladder from his companion
to stop him from doing further damage
to the door when the witness saw him.
I ask the Court to find the accused
not guilty of these charges.

R.W. Stoneham
Lieut
Defending Officer

14 Mar 55

Judge Advocate's
Summing up -
In Re- F-16599 Pte Faulkner J.H.

In the course of this summary it is my duty as Judge Advocate to review the evidence admitted at trial and advise the court on the law.
The Court is, however, the sole judge of the facts and anything I say now or may have previously said in directing my personal views as to the facts should be totally disregarded. The Court and the Court alone is the judge of the facts.
The evidence in this case has fortunately been direct - the court does not appear to be faced with difficulties in that respect.
With reference to the law involved I have the following comments to make.
"Previous indulgence" referred to in the 1st charge simply relates to the time before "he became unfit for duty"; it does not necessarily refer to the time before the accused went on duty.
Drunkenness as a defence is capably contained in para 48 Ch. III. MML @25 and in para 9 ch. VII, MML @106 - both of which I now read to the court.
Common Assault is defined at 927 (Archbold).
An assault is an attempt to commit a forcible crime against the person of another ..... it includes an attempt to commit a battery, and also a battery actually committed. A battery, in the legal acceptation of the word, includes beating or wounding. To beat, also in the legal acceptation of the term, means not merely to strike forcibly with the hand, or a stick, or the like, but includes every touching or laying hold (however trifling) of another's person or clothes, in an angry, revengeful, rude, insolent or hostile manner ---- as for instance thrusting or pushing him in anger ---- holding him by the arm.
It is also my duty to point out to the court that the accused is entitled to the benefit of any reasonable doubt. I say a reasonable doubt, that is, some doubt which is based on the facts before the court and not some doubt which is purely imaginary. If the court has a reasonable doubt after hearing and weighing the evidence then the accused is entitled to the benefit of that doubt.

(over)

The onus of proof lies on the prosecution: it is not for the accused to prove himself innocent, it is for the Prosecution to prove him guilty.

That is all I wish to say unless the court, or the Prosecuting or Defending officers wish me to explain any points which I may have overlooked.

Mr. President have you any points on which you wish me to address the court? answer. no!

Mr. Prosecuting officer have you any points on which you wish me to address the court? no!

Mr. defending officer have you any points on which you wish me to address the court? no!

Lt Col
J.A.

Accused's Plea of Mitigation. E3

I enlisted 16 Apr 40. Came O/S 1 Jul 44.
I was on coastal defence on the Gaspe Peninsula
and in Halifax up till Jul 44. I was in
action 1 Oct 44 with the Black Watch until
I was taken sick with arthritis 16 Oct 44
and evacuated to hospital. I went back to
the unit in November '44. After 3 or 4 days
I was again evacuated for investigation of my
shoulder & my knee.

J H Faulkner.

14 Mar 45 63

Plea for Mitigation of Punishment
in the case of
F-16599 Pte John Henry Faulkner

Mr President and Members of the Court.

I beg the Court to consider the fact that this man was drunk as is evident from his actions at the time and from the statements of the witnesses. Although this does not excuse the accused I feel it is the reason why he acted in the manner stated by the witness and that what he did was not intentional but as is often the case with a drunken man he had a wild desire to find ~~[illegible]~~ a certain person for some uncertain reason and this one thought was so predominant in his mind he did not know what he was doing.

I also ask the Court to consider this man's excellent service done for his country including two periods in action with the Black Watch Regt and I beg the Court's leniency in deciding punishment.

L Wilson Lieut
Defending Officer.

E & A

ARMY FORM B 2067

Statement as to Character and Particulars of Service of Accused.

Number.	*Rank.*	*Name.*	*Regiment (or as the case may be).*
F-16599	Pte	John Henery FAULKNER	10 C.B.R. Bn.

1. The following is a fair and true summary of the entries in the regimental and squadron, battery or company conduct sheets† of the accused, exclusive of convictions by a court martial or a civil court, of summary awards under section 47 of the Army Act, and of cases in which trial has been dispensed with :—

NOTE.—At a trial by field general court martial this summary may be compiled from the field conduct sheet. The conduct sheet(s) mentioned should be produced in court with this statement but not annexed to the proceedings.

† See para. 677, K.R., 1940.

* The numbers herein stated should correspond with the number of entries in the conduct sheets, punishment being given to the most serious offence in each entry, and to any recognised special acts of gallantry or distinguished conduct.

INSTRUCTION.—If the charge is for drunkenness the entries for drunkenness must be stated separately and dated.

	* Within last 12 months.	*Since Enlistment.
For A.A. 15 (1)	1 times	12 times.
For A.A. 19	times	4 times.
For A.A. 40	times	2 times.
For ~~A.A. 40~~	~~times~~ nnex	~~times~~ xtions
For	~~times~~ nnex	~~times~~ tions

~~Number of instances of gallantry or distinguished conduct.~~ Nil

There are no entries in the conduct sheets of the accused. Nil

2. ~~The accused has not been previously convicted, or~~ Nil

~~Previous convictions of the accused by a court martial or a civil court, summary awards under section 47 of the Army Act and dispensations with trial under section 78 of the Army Act, are set out in the schedule annexed to this statement.~~ Nil

3. The accused is not under sentence at the present time, ~~or The accused at the present time is under sentence for~~ Nil

~~beginning on the~~ ~~day of~~

4. The accused has been in confinement, awaiting trial on the present charges, for NIL days in civil custody, and ~~12 2 9~~ days in military custody, making a total of ~~12 2 9~~ days, of which NIL days were spent in hospital.

5. The present age of the accused according to his ~~attestation paper~~ record of service is 35 yrs 4 months 9 days

6. The date of his ~~enrolment~~ attestation specified in his ~~attestation paper~~ record of service is 26 Apr 40

7. The service which the accused is allowed to reckon towards discharge or transfer to the reserve is 4 yrs 10 Mths

8. The accused is entitled to deferred pay or gratuity in respect of 4 yrs 10 mths service.

9. The accused is entitled to reckon 4 yrs 10 mths service for the purpose of determining his pension, etc.

10. The accused is in possession of, ~~or entitled to, no military decoration or military award (or is in possession of, or entitled to, only military decoration or record)~~ CVSM & Clasp

11. ~~If the accused is a non-commissioned officer.~~ ~~The accused before he was made a warrant officer had held the rank of~~

12. ~~If the accused is a warrant officer.~~ The accused holds at the above the rank of ~~and served in his regiment (or corps or department) the rank of~~ ~~for~~ ~~years~~

(*21960) W1.34698/1782 20,000 10/43 A.& E.W.Ltd. Op.668
(28908) W1.35924/1498 12,000 2/44 " "

Schedule of Convictions by a Court Martial or Civil Court, of summary awards under Section 47 of the Army Act and of cases in which trial has been dispensed with of accused.

No. ..... Rank ..... Name ..... of ..... Regiment (or as the case may be).

(INSTRUCTION—A verbatim extract from the regimental books, stating these convictions and dispensations with trial, must be inserted.)

Description of court by which tried, or status of officer disposing of the charge or dispensing with trial	Date and place of trial, or summary award under A.A. 47, or of order dispensing with trial.	Charges upon which convicted, or in respect of which trial was dispensed with.	Sentence of the court or authority disposing of the charge, or order of the dispensing authority.	Punishment remitted.

I HEREBY CERTIFY that the foregoing schedule of convictions and dispensations with trial is a true extract from the regimental books in my custody.

Signed this ~~27~~ 14 day of MARCH February 1945

Capt

13.—The accused has served as a non-commissioned officer continuously, without reduction, to the present date.

		Date of Promotion.
In the rank of	..... years	.....
In the rank of	..... years	.....
In the rank of	..... years	.....

(INSTRUCTION—If any number in any of the above paragraphs cannot be stated from the regimental books, the paragraph must be struck through, except that in the case of a trial by field general court-martial the information may be collected from such sources as are available and the paragraphs concerned amended accordingly.)

No. W-16599 Name FAULKNER John Henery | Sqn, Battery, or Company 105th Coast Battery | RCA Corps | Date of enlistment 26-4-40 | GC Badges Nil | Service or Proficiency Pay N/A | MFM 6 (AFB 177) 40/P&S/136 (3438)

Date of last entry in Company Conduct Sheet N/A | No and date of last drunk N/A | Period not reckoning towards freedom from extra fine N/A | Sheet No 1 | Signature OC Company, etc | Character

Place	Date of offence	Rank	Cases of drunkenness	OFFENCE	Names of Witnesses	Punishment awarded	Date of award or of order dispensing with trial	By whom awarded	Remarks
Bedford	20-7-41	Gnr		AWL 0800 hrs 20-7-41 to 1145 hrs 20-7-42 6 hrs 45 min.	Sgt. Travis Bdr. Jones	3 days CB	22-7-41	TP Slaxen Capt	1 days pay FRI
Fort Prevel	15-10-41	Gnr		AWL 1800 hrs 5 - 10-41 to 1130 hrs 16-10-41	Bdr. Ferguson Bdr. Jones	10 days detention	18-10-41	A.R.Milburn Major	Forf 12 day FR & I
Fort Prevel	1-11-41	Gnr		Drunkness 1st charge. Breaking a car window. AWL 8½ hrs	Sgt. Barchard L/Cpl. Perterson	Admonished	2-11-41	A.R.Milburn Major	Forf 10.00 doll for W. 1 dys ars pay
Sandwich	9-7-40	Gnr		AWL from 1830 hrs 2-7-40 to 2055 hrs 9-7-40	Sgt. Parcell Bdr. Anderson	14 days CB	10-7-40	J.F.S. SHAW Major	Forf 3 days pay
S/H	31-10-41	Gnr		AWL from 1400 hrs 31-10-40 to 1000 hrs 2-11-40 1 days 20 hrs	Bdr. Kennedy	14 days CB	4-11-40	A.D. Renney Major	Forf 7 days pay
Sandwich	1-3-41	Gnr		AWL from 0900 hrs 1-3-41 to 1700 hrs 1-3-41 ~~hr~~ 8 hrs	L/Sgt Tennerty	7 days CB Forf 3 days pay	3-3-41	G.G. Robertson Capt. Major	Forf 1 days Pay FR & I
Sandwich	28-3-41	Gnr		AWL 10 hrs 29 min. Using obscene language to a superior	BSM McKinzie Sgt. Orten	10 dys detention	2-4-41		

(PTO)

Place	Date of offence	Rank	Cases of drunkenness	OFFENCE	Names of Witnesses	Punishment awarded	Date of award or of order dispensing with trial	By whom awarded	Remarks
Sandwich	30-5-41	Gnr		AWL from 1330 hrs 30-5-41 to 1530 hrs 5-6-41 6 dys 2 hrs	Sgt Nickerson	14 days CB	7-6-41	Major	6 days pay FR & I
Partridge Is.	9-1-42	Gnr		Issued with transportation Warrant A/110298					
Fort Duff	15-4-42	Gnr		AWL from 0915 hrs 15-4-42 to 1530 hrs 15-4-42 6 hrs 15 min	Sgt. Donovan	7 days CB	17-4-42	K.P. Lawton Major	Forf 1 dys pay FR & I
Fort Duff	21-5-42	Gnr		Drunkeness 2nd charge		Fines 5.00 dollars	2-5-42	Lt. Johnson	
Fort Prevel	3-6-42	Gnr		AWL from 0800 hrs 3-6-42 to 1630 hrs 8-6-42 5 dys 8 hrs 30 Min	Sgt. McDonald	14 dys Det.	9-6-42	A.R. Milburn Major	Forf 6 dys pay FR & I
Fort Prevel	30-6-42	Gnr		AWL 1330 hrs 30-6-42 to 1230 hrs 13-7-42 13 days 1 hour	Sgt. McDonald Sgt Beazley Cpl Stone	28 days Det.	15-7-42	A.R. Milburn Major	Forf 14 days pay FR & I
Fort Prevel	28-12-42 5-12-42	Gnr	3rd	Drunkness Issued with transportation Warrant A/39439	Cpl. Fraser C.	Fines 8.00 dollars FR & I 161 (c)	31-12-42	Lt. J.B. Stanewell	
Fort Prevel	25-8-43	Gnr	4th	Drunkness	BSM McNeil S/Sgt White	Fines 10.00 dollars	29-8-43	H.G.Meisner Major	
Fort Prevel	8-10-43	Gnr		Section 40 A.A. Resisting Arrest	Lt. Maxwell Lt. Bourbonniere, A.J.	Awarded 14 dys Pay	11-10-43	A.R. Milburn Major	14 dys pay FR & I 149 (2)

No F-16599 Name John Henery FAULKNER | Sqn, Battery, or Company 105th Coast Battery RCA | Corps | Date of enlistment 26-4-40 | GC Badges | Service or Proficiency Pay | MFM 6 (AFB 122) 40/P&S/136 (3438)

Date of last entry in Company Conduct Sheet | No and date of last drunk | Period not reckoning towards freedom from extra fine | Sheet No 2 | Signature OC Company, etc | Character

Place	Date of offence	Rank	Cases of drunkenness	OFFENCE	Names of Witnesses	Punishment awarded	Date of award or of order dispensing with trial	By whom awarded	Remarks
Fort Prevel	22-10-43	Gnr		AWL from 1330 hrs 22 Oct 43 until 1200 hrs 24 Oct 43	L/Sgt Sears W. Sgt. Workman T.	Fined 7 dyas pay	25-10-43	J.B. Stanewell Lieut.	2 dys pay FR & I 149 1-A
Petawawa, Ont	8-3-44	Gnr		AWL from 2200 hrs 8 Mar 44 until 1700 hrs 9 Mar 44 19hrs	Documentary	Forfs 3 O.P. Awarded 7 dys CB	14-3-44	Lt-Col E.J. Ketchum	Forf 1 dys pay FR & I

CERTIFIED TRUE COPY

Officer i/c regimental books.

(PTO)

SUMMARY OF EVIDENCE

Summary of evidence in the case of F-16599 Pte. John Henery FAULKNER (R.H.C.) of 42 Coy on strength of 10 C.B.R. Bn, a soldier of the Cdn Army Overseas.

A-3282 Pte. VANNIUWENHOVE, A. of 49 Coy on strength of 10 CBR Bn, is duly sworn as interpreter.

By direction of the Commanding Officer this evidence is taken on oath.

FIRST WITNESS
Prosecution

D-56228 Sgt. LeGUERRIER, J.L. (A & SH of C) of 42 Coy on strength of 10 CBR Bn having been duly sworn states:

I am D-56228 Sgt. LeGUERRIER, J.L. (A & SH of C) of 42 Coy on strength of 10 CBR Bn. At approx 1340 hrs, 14 Feb 45, the accused whom I now recognize, entered 42 Coy Office. He was under the influence of alcoholic beverages. I immediately placed him under close arrest, and escorted him to the Guardroom. He was properly dressed.

The accused declines to cross-examine witness.

R.P. 83 (b) complied with.

John L Le Guerrier
(J.L. LeGUERRIER) Sgt D-56228

SECOND WITNESS
Prosecution

A-103180 L/Cpl. HANLEY, W.F. (Provost) of GHENT DETACHMENT on strength of 2 Cdn L Of C Provost Coy, having been duly sworn states:

I am A-103180 L/Cpl. HANLEY, W.F. (Provost) of GHENT DETACHMENT on strength of 2 Cdn L of C Provost Coy. At approx 1400 hrs, 22 Nov 44, on information received, I proceeded to No. 8 Kaltenberg Straat where two soldiers were causing trouble. I went into the house and down the basement and found two soldiers, the accused whom I now recognize, was one of them. I placed both under arrest and escorted them to Detachment H.Q. The panel of the door to the house was broken.

Cross-examination by the accused.

Q. 1. Did I resist arrest?

A. 1. No you did not.

Q. 2. Was I drunk?

A. 2. You had been drinking but you were able to walk upstairs and get into the jeep alright.

Q. 3. Was there a civilian man there?

A. 3. Yes there was.

R.P. 83 (b) complied with.

W.F. Hanley
(W.F. HANLEY) L/Cpl A-103180

THIRD WITNESS
Prosecution

Mr. De Vos GUILLAME, 8 Kaltenberg Straat, GHENT, having been duly sworn states.

I am Mr. De Vos GUILLAME, 8 Kaltenberg Straat, GHENT. Between 1300 hrs and 1400 hrs, 22 Nov 44, there was a painter on a ladder putting in a glass window above the top of the door. I started to talk to the painter, when I saw the accused, whom I now recognize, push the painter. The painter then took the accused by the arm and took him to the end of the street. The painter returned to the house and tried to lock the door. Then the accused returned with a companion, took the ladder and forced in the door. Then when the panel of the door was broken the painter ran upstairs. I saw that I had to open the door or else the whole door would have been broken. I was taken by the accused by the shoulder and asked to show him all the rooms so he could find the painter. He forced me to go into the cellar. I told him I couldn't go as I am a cripple. He then forced me into the cellar and on the last stairway I fell down. The accused came into the cellar, helped me up and brought me back upstairs. By that time the police came and took the soldiers away. I paid 350 francs to get my door fixed and fifty francs for my artificial leg to be repaired.

Cross-examination by the accused.

Q. 1. Was I drunk?

A. 1. You were very drunk.

Q. 2. Apparently I was after the painter and not you?

A. 2. That is right.

Witness questioned by Officer taking the summary.

Q. 1. How did the accused force you into the cellar? Did he push you?

A. 1. He had a hold of my shoulder and motioned me down stairs with his free arm. I tried to go downstairs but on the last step I tripped and fell. Then the accused came down and picked me up and helped me back upstairs. He did not push me.

R.P. 83 (b) complied with.

De Vos Guillaume

(De Vos GUILLAME)

FOURTH WITNESS
Prosecution

M. George PORTER, 19 Van OO[illegible]1ste TEGHEST STRAAT, Lederberg GHENT, having been duly sworn states:

I am M. George PORTER, 19 Van OO[illegible]1ste TEGHEST STRAAT, Lederberg. I was working putting windows in the top of the front door at No. 8 Kaltenberg Straat, at around 1230 hrs one day in November 44. I heard singing, turned around to look across the street and there I saw two drunken soldiers, the accused, whom I now recognize, was one of them. I saw them enter the cafe on the corner and a few minutes later they came out again. They then crossed the street to try the other cafe and could not get in

I was still on the ladder and had to descend to cut a piece of glass, then I heard someone holler. I saw a boy pass the door looking backwards all the time so I looked outside the door and the accused was pointing at the boy.

FOURTH WITNESS (cont'd)
Prosecution

Then when the accused reached the door where I was working, he tried to talk to me but I could not understand him and told him so.

I was standing in the doorway and the accused came in. I put the plate of glass I was holding inside the door, and the accused kept talking. I thought the accused thought the house was a cafe. I tried to make him understand it was not a cafe. Then the crippled man told me to be careful of the window as the accused was near it. I took the window pane away, the accused tried to step on it but it did not break, so I took it outside. As I took it out the accused started to get angry at me.He started to talk to me with loud words, pointed a finger at me, and tried to get something from inside his blouse.

I took the accused by the arm and led him outside and took him to the corner of the street, where his friend was standing and then I returned and closed the door.

I went down stairs and talked with the crippled man and while talking I saw through the window people across the street making signs at us, that the two men were returning. I then heard big bangs on the door. I went upstairs and placed a plank against the door to hold it from being forced and also used my foot as a brace. I saw the panel of the door being broken in with a ladder, then I ran upstairs, and saw nothing else. I did not see who was using the ladder as a ram.

The accused declines to cross-examination the witness.

R.P. 83 (b) complied with.

G. LePorter
(M. George PORTER)

The accused having been cautioned as follows: "Do you wish to make any statement, or give any evidence on oath, You are not obliged to say anything or give any evidence unless you wish to do so; but whatso-ever you may say or any evidence you may give will be taken down in writing and may be used in evidence;" states - I would like to make a statement, but I cannot remember anything that happened on 22 Nov 44.

Q. 1. On oath?

A. 1. Yes Sir.

P-16599 Pte FAULKNER, J.H. (R.H.C.) of 42 Coy 10 CBR Bn having been duly sworn states:-

I am P-16599 Pte FAULKNER, J.H.(R.H.C.). All I can remember in regards to the incident of Nov 22 is that I was talking to a civilian man after I left a cafe; but I can not say where it was.

J.H. Faulkner
(J.H. FAULKNER) Pte P-16599

I certify that the foregoing Summary of Evidence, consisting of three (3) pages, was taken down in writing by me, in the presence and hearing of the accused.

I certify that R.P. 4 (C)(D)(E) and (F) have been complied with.

F. Judy Lieut
(J. F. JUDY) Lieut
CH of O 10 C.B.R.G.
Officer detailed to take
Summary of Evidence

LIST OF WITNESSESS

PROSECUTION

D-56228 Sgt. LeGUERRIER, J.L. (A & SH of C) 42 Coy 10 CBR Bn.

A-103180 L/Cpl. HANLEY, W.F. (Provost) 2 Cdn L of C Provost Coy.

Mr. De Vos GUILLAME, 8 Kaltenberg Straat, GHENT.

M. GEORGE PORTER, 19 Van Cohjheumst Straat, Lederberg GHENT.

DEFENCE

NIL

LIST OF EXHIBITS

NIL

I CERTIFY THAT I HAVE RECEIVED FREE OF CHARGE A COPY OF THE SUMMARY OF EVIDENCE, THE CHARGE SHEET, THE LIST OF WITNESSES AND A LIST OF EXHIBITS.

I DO DESIRE THE SERVICES OF AN OFFICER TO REPRESENT ME AT MY TRIAL BY COURT MARTIAL.

J.H. Faulkner

(J. H. FAULKNER) Pte P-16599

SUPPLEMENTARY SUMMARY OF EVIDENCE

In the case of F.16599 Pte John Henry FAULKNER (R.H.C.) of 42 Coy on the strength of 10 CHR Bn, a soldier of the Cdn Army Overseas.

By direction of the Commanding Officer this evidence is taken on oath.

FIRST WITNESS
PROSECUTION

D.56228 Sgt LeGuerrier J.L. (A & SH of C) of 42 Coy on the strength of 10 CHR Bn, having been duly sworn states:

I am D.56228 Sgt LeGuerrier J.L. (A & SH of C) of 42 Coy on the strength of 10 CHR Bn. On the afternoon 13 Feb 45, I told the accused, whom I now recognize, to remain in his room on the 14 Feb 45, to await a call for parade, as he was to proceed to the M.O., the D.O. and the Q.M. Stores. I sent a runner at approx 1330 hrs, 14 Feb 45 to tell the accused to report to me in the Coy Orderly Room to attend the clearance parades. While awaiting the arrival of the accused, I received a telephone message from the R.O.R. telling me they had received three charges against Pte Faulkner. When he arrived under the influence of alcoholic beverages, and considering he had these other charges, I placed him under close arrest.

Accused declines to cross examine this witness.

R.P. 83 (b) complied with.

John LeGuerrier Sgt
(J.L. LeGuerrier) Sgt D.56228

The accused, having been duly cautioned as follows; "Do you wish to make any statement or give any evidence on oath? You are not obliged to say anything or to give any evidence, unless you wish to do so, but what-so-ever you may say or any evidence you may give will be taken down in writing and may be used as evidence", declines to give any evidence, and reserves his defence.

I certify that the foregoing Supplementary Summary of Evidence, consisting of one (1) page was taken down by me, in the presence and hearing of the accused.

I certify that R.P. 4 (c)(d)(e) and (f) have been complied with.

J.F. Juby Lieut.
(J.F. Juby) Lieut.,
CH of O, 10 CHR Bn,
Officer detailed to take
Supplementary Summary of Evidence.

LIST OF WITNESSES

FOR THE PROSECUTION D.56228 Sgt LEGUERRIER J.L. (A & SH of C) 42 Coy, 10 CBR Bn.

FOR THE DEFENCE NIL.

LIST OF EXHIBITS

NIL.

I CERTIFY THAT I HAVE RECEIVED FREE OF CHARGE, A COPY OF THE SUPPLEMENTARY SUMMARY OF EVIDENCE, AND A LIST OF WITNESSES, AND A LIST OF EXHIBITS.

I DO DESIRE THE SERVICES OF AN OFFICER TO REPRESENT ME AT MY TRIAL BY COURT MARTIAL.

J.H. Faulkner
.....
(J.H. FAULKNER) Pte F.16599

Date: 26 Feb 45

F-16599 Pte. FAULKNER, J.H.
(NAME OF ACCUSED)

1. I hereby acknowledge receipt of one copy of CHARGE SHEET and one copy of the SUMMARY OF EVIDENCE delivered to me 2 Mar 45.
(Date)

2. (a) ~~I request that~~ _____ if available, be appointed. OR

(b) I request that an officer be appointed as my Defending Officer at my trial by Court Martial.

(Delete either (a) or (b))

(SIGNED) J H Faulkner
F-16599 Pte. FAULKNER, J.H.

I hereby certify that LT. L.R. WILSON was appointed to defend F-16599 Pte Faulkner J.H. at his forthcoming trial by Court Martial and that the said Accd was notified that he was Defending Officer on 2 Mar 45.
(Date)

D.M. Wardle Lt
a/s (Adjutant)
10 Cdn. Base Rft. Dn.

H.Q.C. 55-F-867 CONFIDENTIAL

DEPARTMENT OF NATIONAL DEFENCE OTTAWA, CANADA

SUBJECT

FIELD GENERAL COURT-MARTIAL

FASSETTE, JOSEPH PAUL GORDON [illegible] SPR.

CENTRAL REGISTRY	DATE	R.C. OR S.F.	INITIALS	REFERRED TO	FOR	INITIALS	DATE
				(If purpose for which referred must be expressed on slip fill in "Note and Return" or "Note and Forward" as the case may be)			2-12-46

CONFIDENTIAL
H.Q.C. 55-F-867

OVERSEAS COMBINED

NOTICE

1. Files should be retained no longer than absolutely necessary. If a file is frequently needed at short intervals, it is better to R.F. it for two or three days than keep it out of Central Registry indefinitely. This ensures it being completed and kept up to date, and also gives other officers the opportunity to use same.
2. Central Registry should be notified whenever a file is passed direct to another branch.
3. All outgoing letters should bear the official file number.

PASS THIS FILE IN ENVELOPE

SCHEDULE.

PART I. PLEA(S), FINDING(S) AND SENTENCE.

Accused : C.100191 SPR JOSEPH PAUL GORDON, FASSETTE

Charge. (Insert "alternative" where applicable.)	Plea. (See Instrs p 2.)	Finding. (See note below.)	(Space for use as required for further charges, accused charged jointly, special findings, etc.)
1st	GUILTY	GUILTY	
2nd			
3rd			
4th			
5th			
6th			

(Note : As to findings for lesser offences see AA 56, RP 44 ; findings on alternative charges see MML p 483 fn 4 para 2, RP 44 ; special findings see RP 44 and MML p 753, and in loss of kit see RP 44 fn 6.)

~~At present under sentence for~~ ~~beginning on (date)~~ (1)

(1. Insert sentence being served, or delete, if not applicable. See RP 46(A). Information should be found on MF B355 or AF B296.)

Time in confinement awaiting present trial—a total of 6 days, of which NIL days were spent in hospital.(1)

(1. See RP 46(A) fn 2. Information should be found on MF B355 or AF B296 admitted in evidence under E2.)

Sentence Awarded by the Court :

TO UNDERGO DETENTION FOR ONE HUNDRED AND TWENTY ~~DY~~ (120) DAYS

(Sgd) – Judge-Advocate, if any. 20 OCT 44 Date awarded. (Sgd) A A Ayer Major R C E President. (RP 45, 50.)

(See back of Convening Order as to assembly and disposal of record after trial.)

PART II. MINUTE WHERE CONFIRMATION RESERVED. (AA 54(5), RP 120(F), MML p 760.)

(Sgd) ..... Commanding .....

PART III. DECISION OF CONFIRMING OFFR ON FINDING(S) AND SENTENCE.

(For duties and powers see AA 54, 57, RP 37(D) fn 6,46(A), 51-56, 120, MML pp 759-761, KR Can 567-577. Acquittals require no confirmation and cannot be revised : AA 54(3). Sending back finding or sentence for revision by Court : AA 54(2), RP 120(G). If not confirmed, accused may be tried again : AA 157, MML p 64. Minute of confirmation or non-confirmation may be altered before promulgation : RP 53, MML p 65. Quashing after promulgation : KR Can 573. Duties and powers of reviewing offrs : AA 57, 57A, RP 53A, 54. The Confirming Offr must sign here personally. AA 172 fn 1.)

My decision on the finding(s) and sentence set forth in Part I is :

Confirmed

~~I direct that the accused be not committed to prison or detention barracks until further orders.~~ (1)

(1. AA 57A. Delete if not used.)

(Sgd) [signature] Officer in Command, G.H.Q. 1 Echelon, 21 Army Group

Date ..... Commanding ..... Confirming Officer.

PART IV. PROMULGATED AND EXTRACTS TAKEN. (RP 53, KR Can 576, 577.)

Accused.	Date.	Signature of Offr.
C.100191 Spr Fassette JPG	13 Oct 44	[signature] Major

ALL DELETIONS AND ALTERATIONS WILL BE INITIALLED.

I certify that there are no ill-entries or irregularities to justify withholding confirmation of these proceedings.

[signature] Major, DJAG, Can Sec GHQ, 1 Ech, 21 Army Gp. 17 Oct 44

RECEIVED 21 OCT 1944 JAG BRANCH G.H.Q.

RECORDED AT CMHQ IN AB 160 4C-65

CFA96 (In lieu of AFA3) 40/P & S/1698 (2864)

FIELD GENERAL COURT-MARTIAL

Convened by Order of W.A. CAPELLE Comd 2 Bn. R.C.E. dated 30 SEPT 44

PROCEEDINGS REVIEWED Date 22 OCT 44 DJAG Can Sec G.H.Q. 1 Ech 21 Army Gp

ACCUSED.

(As to the trial of two or more charged jointly see RP 16, 71, 109. As to reasons for showing (a) permanent or confirmed rank, and (b) appmt, A/rank or A/appmt, if any, see AA 182, 183, fns, KR Can 308, 328, 330.)

Number.	(a) Prmnt R. (b) Appmt, A/R or A/Appmt.	Full Christian Names.	Surname.	Unit.
C-100191	SPR	JOSEPH PAUL GORDON,	FASSETTE	3 BN R.C.E.

PROCEEDINGS REVIEWED 31 Oct 44 Jack Evans Barrow Capt REVIEWING OFFICER, JAG BRANCH G.H.Q.

PROCEEDINGS OF TRIAL.

Held in the Fd in (country) FRANCE on (date(s)) 2 OCT 44

RECORD FORM A—OPENING PROCEEDINGS AND ARRAIGNMENT. 12/24

A1. The President, Members, waiting Member, JA, if any, and Offrs under instr, if any, assemble, and the Court is closed.

(PRINTED MATTER, NOT IN ITALICS FOR GUIDANCE, WILL BE DELETED, IF NOT USED OR APPLICABLE, AND INITIALLED BY PRES OR JA. The Schedule referred to throughout is on p 4. Citations do NOT include all relevant fmn ROs. For guidance on procedure when a variation in this form arises, see form for GCM in MML pp 741 to 759. A brief record of such variation will be made and given a number having reference to appropriate or preceding para number herein. See back of Convening Order, CF A95, for oaths and instrs on how to record addresses, evidence, etc, which instrs are hereafter called "Notes". As to general provisions for conducting the trial see AA 53, RP 56, 63-70, 73, 74, 94, 103, 119, 132.)

A2. The President initials and lays before the Court the Convening Order and Charge Sheet(s) attached thereto.(1) The Court is satisfied that it is properly convened and constituted(2), accused is (are) amenable to military law, and each charge discloses an offence.(3)

(1. As to use of Summary of Evidence see RP 17 fn 6. 2. AA 49, 50, RP 105-107. 3. RP 11-13, 23, 24.)

A3. The Court is opened. The accused is (are) brought before the Court. At 1015 hours trial commences.

A4. The Prosecutor produces a Medical Certificate that accused is (are) fit to undergo trial by court-martial.(1) ~~The Prosecutor informs the Court that accused elected to be tried by court-martial instead of being dealt with summarily by the CO.(2)~~

(1. KR Can 557. 2. AA 46(8), RP 60 fn 1. For effect see KR Can 563(c). Delete, if not applicable.)

A5. President to accused : Do you object to L/SGT. V. SMITH as interpreter ? Ans NO

The Interpreter is sworn.(1) ~~Do you object to ... as shorthand writer ? Ans ...~~ ~~The shorthand writer is sworn.(1)~~

(1. RP 72. Delete, if none employed.)

A6. The Convening Order and names of the President and Members of the Court are read to the accused.(1) President to accused : Do you object to be tried by me as President or by any of the Members of the Court ?

Ans NO (2)

(1. RP 110. 2. If no objection, waiting member retires. RP 68(8). If objection, see procedure AA 51, RP 25, 71, 18, MML p 742.)

A7. The President, Members, JA, if any, and Offrs under instr, if any, are sworn.(1) The following are the ranks, names and units of the offrs comprising the Court, etc :

President	MAJOR	A.A.AYER	2 BN. R.C.E.
Member	CAPT.	R.C. PARIS	2 BN. R.C.E.
Member	LT.	H.B. EDWARD	2 BN. R.C.E.
Judge-Advocate	–	–	
Prosecutor	CAPT.	F.X. CHABALLE	3 BN. R.C.E.
Defending Offr	LT.	J.R. POWER	3 BN. R.C.E.

Questions by President : Is the Prosecutor a lawyer ? Ans NO Is the Defending Offr a lawyer ? Ans NO (2)

(1. RP 26, 27, 109, 111. List of offrs under instr will be returned separately with proceedings for information of Conv Offr.)
(2. If Pros a lawyer and Def Offr not, accused is entitled to an adjournment when RP 68(8) and fn 2 were not followed. See DI p 3.)

A8. The accused SPR J.P.G. FASSETTE before arraignment make(s) (no) ~~(a)~~ plea

(1)

(1. If a special plea is made for separate trial on one or more charges (RP 62(E), 108), or as to the jurisdiction of the Court (RP 34, 35(A), 113), or in bar of trial (RP 36), or as to accused's mental fitness to stand trial (AA 130, RP 37), or by one of several accused charged jointly to be tried separately (RP 16, 71), such plea, the addresses made in support or against, the evidence, if any, and finding are recorded per Notes. For forms of record see references in fns to RsP cited. Insert in AB rank and name of the accused making the plea.)

A9. The accused is (are) arraigned (separately) on all charges in the charge sheet.(1) The accused does (do) not object to any charge.(2) There is no amendment to be made to the Charge Sheet.(3) The President records the pleas in Part I of the Schedule.

(1. RP 31, 112. See para 1 of Instrs p 2. When more than one Charge Sheet see RP 62 ; when several accused to be tried separately see RP 71(C), and use separate copies of CF A96 to record proceedings. 2. RP 32, RP 33. If otherwise, delete and make appropriate record per Notes.)

A10. The Court (is cleared and) considers the Instrs on Procedure after Arraignment at top of p 2. The proceedings are continued on Record Form B

PRESIDENT OR JA WILL INITIAL ALL DELETIONS AND ALTERATIONS.

A135

INSTRUCTIONS ON PROCEDURE AFTER ARRAIGNMENT.

1. *The accused may not plead or be found Guilty on more than one of two or more charges laid in the alternative (RP 37(A).) As to withdrawal of alternative charges by Prosecutor see RP 35(C). No other charge can be withdrawn for any reason without authy from Convening Offr. If Convening Offr concurs, Court may accept plea of Guilty to lesser, etc, offence. (RP 44(H).) Accused may change a plea of Not Guilty to Guilty during trial. (RP 38.) As to refusing to plead or not pleading intelligibly see RP 35(A). As to plea when sentence may be death see RP 35(D).*

2. *The proceedings on each charge sheet (RP 62) after arraignment will be conducted as follows in the respective circumstances stated:*

I. If pleas to all charges are GUILTY, use Record Form B below.

II. If pleas to all charges are NOT GUILTY, use Record Form D on p [redacted] 3.

III. If pleas to some charges are GUILTY and to other charges are NOT GUILTY and,

(a) Such mixed pleas occur when there are no alternative charges in the Charge Sheet, use Record Form C below. (RP 37(A).)

(b) Such mixed pleas occur in a set of two or more charges laid in the alternative, see RP 37 (A) and fn 2 as to discretion of Court, (i) to try the accused on all such alternative charges as if he had pleaded Not Guilty thereto, or, (ii) to record the pleas as the findings of Court. After deciding between (i) and (ii), Court will proceed under foregoing instrs as may be appropriate to result of its decision. See MML p 744 Instrs (2).

3. *As to responsibility of President to accused see RP 59, 60(C); powers and duties of JA see RP 103; duty of Prosecutor see RP 60(A) (B); duty and privileges of accused and Defending Offr see RP 60(C), 87(C), 91, 92; swearing and withdrawal of witnesses from Court see RP 81, 82; questioning of accused see RP 80, 87(C), 92(B), and of witnesses see RP 83-85; calling or re-calling of witnesses by Court etc see RP 75-79, 86, 116; use of Summary of Evidence at Trial see RP 17(E) fn 6; and responsibility of JA or Pres to record proceedings see RP 94, 96.*

RECORD FORM B—PROCEEDINGS ON PLEAS OF GUILTY TO ALL CHARGES.

B1. The President or JA, if any, complies with RP 35(B) by explaining to the accused the nature and meaning of the charge(s)(1), and that on his plea of Guilty there will be no regular trial but merely a consideration of the sentence to be awarded after he has been given an opportunity to make a statement in reference to the charge(s), call witnesses as to character and make an address in mitigation of punishment.(2)
(1. RP 35 fn 3. 2. MML p 54 para 47.)

B2. President to accused: The Court will now receive any statement you desire to make in reference to the charge(s).(1) If it appears from your statement that there are circumstances which indicate that you do not understand the effect of the plea of Guilty(2), or which show provocation or extenuation in respect of which in your interest the witnesses for the Prosecution should be examined(3), we shall advise you to change your plea to Not Guilty. In making a statement you will not be sworn or subject to cross-examination; and anything you say will not be used in evidence against you after you change your plea. If, however, it appears to the Court that your statement affects only the amount of punishment to which you are liable, you will not be advised to change your plea and you will be given an opportunity later to prove your statement by sworn testimony, if you so desire.(4)

President to accused: Do you wish to make a statement? Ans NO (5)
(1. RP 37(B). 2. RP 37(D) fn 6. 3. RP 35(B) fn 5 para 3, MML p 54 para 47. 4. See para E3 of Record Form E. 5. Statement, if any, recorded per Notes.)

B3. ~~The Court considers the accused's statement.(1) The Court decides (not) to advise accused to change his (their) plea(s) of Guilty to Not Guilty on ..... charge(s). The accused is (are) so informed, and he (they) charge(s) his (their) plea(s) on ..... charge(s). Part I of the Schedule is amended accordingly.~~
(1. Court may be closed to consider the statement. Delete whole or part not used.)

B4. On the charge(s) to which the plea(s) of Guilty is (are) not changed the President records finding(s) of Guilty in Part I of the Schedule.(1)
(1. RP 35(B). If any plea(s) is (are) changed, use Record Form C or D as appropriate.)

B5. The Summary of Evidence is marked Ex A, initialled and read aloud by the President.(1)
(1. If there is no Summary, or if it is inadequate, comply with RP 37(B). If there is any evidence inconsistent with any plea standing as Guilty, Court will advise accused to change such plea and, if changed to Not Guilty, try such charge(s) by use of paras D1 to D8 inclusive of Record Form D on p 3. RP 37(D).)

B6. The accused having been found Guilty on one or more of the charges, the proceedings are concluded by using Record Form E on p 3.

RECORD FORM C—PROCEEDINGS ON MIXED PLEAS OF GUILTY AND NOT GUILTY.

C1. As to the charges on which accused pleaded NOT GUILTY the trial is continued by using paras D1 to D8 inclusive of Record Form D on p 3 before proceeding with C 2.(1)
(1. RP 37(A) (E).)

C2. The charges on which accused pleaded GUILTY are read to him (them) again, and the trial is continued by using paras B1 to B5 of Record Form B above.(1)
(1. Under B5 such parts only of the Summary of Evidence are read as relate to the charges dealt with under C2. If any plea is changed to Not Guilty, trial thereon proceeds by complying with paras D1 to D8 inclusive in Record Form D on p 3 and making an appropriate record thereof on a separate sheet.)

C3. The accused having been found Guilty on one or more of the charges, the proceedings are concluded by using Record Form E on p 3.

PRESIDENT OR JA WILL INITIAL ALL DELETIONS AND ALTERATIONS.

RECORD FORM D—PROCEEDINGS ON PLEAS OF NOT GUILTY TO ALL CHARGES.

D1. President to accused: Do you wish to apply for an adjournment on the ground that any of the rules relating to procedure before trial have not been complied with, and that you have been prejudiced thereby, or on the ground that you have not had sufficient opportunity to prepare your defence? Ans.....(1)
(1. If "yes", see RP 39(A) for procedure. Statement or evidence, if any, is recorded per Notes.)

D2. The Prosecutor makes (an) (no) opening address.(1)
(1. RP 39(B), 60(A) (B), 90, 92(C) (D). Record address per Notes, subject to RP 95(C).)

D3. The evidence for the Prosecution is taken.(1)
(1. RP 39(C), 114, KR Can 555. Record evidence per Notes. As to Prosecutor giving evidence himself see RP 39(D) (E).)

D4. The Prosecution is closed.(1) The Defending Offr submits that the evidence for the Prosecution does not establish a prima facie case against the accused on the ..... charge(s).(2) The Court is closed, and considers the submission.(3) The Court is re-opened, and the President announces that the submission is disallowed on the ..... charge(s), and allowed on the ..... charge(s), and that, accordingly, the trial will proceed on the former, but the accused is (are) found Not Guilty on the latter charge(s).(4)
(1. Delete remainder of this para, if submission not made. 2. Arguments on submission, answer and reply are recorded per Notes. 3. RP 40 fn 1. See MML p 72 paras 12-14 and p 81 para 42. 4. Delete part not used. If accused acquitted on all charges, use second alternative in para D8.)
NB: If trial proceeds, accused must be allowed great latitude in making his defence, and the Court should not stop his defence solely on ground of irrelevance. (RP 60(C), 114, 115.)

D5. President to accused: You will now proceed with your defence.(1) You may, if you wish, give evidence yourself on oath as to the facts or your character or both, in which case you will be subject to cross-examination.(2) You may, however, make a statement without being sworn, and you will not be subject to cross-examination.(3) But a statement which could have been made on oath will not carry with the Court the same weight as sworn testimony.(4) You may call witnesses in your defence and as to character, whether you give evidence or make a statement or do neither.

President to accused: Do you wish to give evidence yourself as a witness, make a statement, or do neither?
Ans ..... Do you intend to call witnesses on your behalf?
Ans ..... Are they witnesses as to character only? Ans .....
(1. RP 155. 2. RP 40(A), see 80(D). 3. RP 40 fn 10. 4. RP 40 fns 2, 9.)

D6. Consequent on the answers recorded in para D5 the appropriate procedure for the defence is followed.(1)
(1. RP 114, 115, 116. For procedure see Notes on back of Convening Order, CF A95. Evidence for accused as to his character should, if in his interest, be given before the finding. See RP 46(A) fn 1, 86(C). Note the further opportunity in para E1 of Record Form E. Record per Notes addresses, statement, evidence and any summing up by the JA under RP 42, 103(e).)

D7. The Court is closed to consider the finding(s).(1) The finding(s) of the Court is (are) recorded in Part I of the Schedule.(2) The Court is re-opened.
(1. RP 43, 117(A). See Notes in Part I of Schedule. 2. RP 44(A).)

D8. The President announces the finding(s), if any, of Not Guilty, and states to the accused that the finding(s) of the Court on the ..... charge(s), being subject to confirmation, will be promulgated later.(1)
Or, The President announces that the accused is found Not Guilty on all charges and is to be released forthwith, and that the proceedings are accordingly terminated. Part I of the Schedule is dated and signed.(2)
(1. AA 54(3) (6), RP 45, 120(A). 2. AA 54(3), RP 45, 117. This alternative announcement is not applicable when there are pleas of Guilty outstanding and dealt with under Record Form B or C.)

D9. The accused having been found Guilty on one or more of the charges, the proceedings are concluded by using Record Form E below.

RECORD FORM E—PROCEEDINGS ON CONVICTION BEFORE SENTENCE.

E1. President to accused: Do you wish to give evidence yourself or to call any witnesses as to your character?(1)
Ans NO
(1. If evidence has already been given by accused or his witnesses as to his character, delete this para. RP 37(C) fn 4, 46 fn 1. Accused and witnesses are sworn. Evidence recorded per Notes.)

E2. The Prosecutor produces Statement(s) as to Character and Particulars of Service(1), and certified true copy (copies) of Conduct Sheet(s)(2), purporting to refer to the accused, which he submits to the Defending Offr for examination, and then to the Court for admission in evidence. The Court is satisfied that these documents refer to the accused, because (i) they purport to be signed in the manner required by AA 163(l) (g) (h), and (ii) they purport to refer to (a) soldier(s) having the same number, rank, name and corps as the accused. Admitted in evidence and marked Ex B and Ex C respectively.(3)
(1. MFB 355 or AFB 296. 2. MFM 6. 3. RP 46, KR Can 558. If above documents not produced, see RP 46 fn 1 para 1.)

E3. President to accused: Do you wish to address the Court on the Statement(s) and Conduct Sheet(s), and in mitigation of punishment?(1) Ans YES (2)
(1. RP 37(C), 46(D). 2. Address, if any, recorded per Notes. Court should permit accused or his witnesses to prove on oath anything here or previously stated which would affect the amount of punishment. RP 37(F) fn 7.)

E4. The President states that the Court is closed to consider the sentence, and that the sentence to be awarded by the Court, being subject to confirmation, will not be announced, but will be promulgated later, and the proceedings in open court are accordingly terminated.(1)
(1. AA 54(6), RP 120(A).)

E5. The Court considers the sentence.(1) The President records the sentence in Part I of the Schedule, which is dated and signed by him and the JA, if any.(2)
(1. When several accused tried separately see RP 7(D). One sentence only, comprised of the punishment or punishments laid down in AA 41, 44 and its proviso, is to be awarded to cover all charges in all charge sheets on which accused found guilty. RP 48. As to sentences see AA 44, 138, 182, RP 46-50, 69, 118, 119(A), KR Can 300, 230, 563-566, Overseas RO 309, 1323. MML p 60, 757-759. As to sentences assigned for civil offences by the law of England see AA 41(5), MML p 130. When accused already under sentence of imprisonment or detention see AA 44(1B), 66(1), KR Can 564. 2. RP 50. As to release from arrest by Confirming Offr see KR Can 567. As to assembly and disposal of record after trial see leaves on back of Convening Order.)

PRESIDENT OR JA WILL INITIAL ALL DELETIONS AND ALTERATIONS.

CHARGE SHEET

The accused C.100191 Sapper FASSETTE, Joseph Paul Gordon, Bn HQ, 3 Bn RCE, a soldier of the Canadian Army placed on Active Service, is charged with:-

FIRST CHARGE
Sec.15(1)
Army Act

WHEN ON ACTIVE SERVICE, ABSENTING HIMSELF WITHOUT LEAVE,

in that he,

in the Field, on 19th September, 1944, absented himself from his unit from 2200 hours on said 19th day of September, 1944, until 1630 hours on the 26th day of September, 1944.

(GEO.W. SMITH) LT.COL.RCE
OC, 3 Bn RCE

FIELD
26 Sep 44

To be tried by FGCM

Lt.-Col. R.C.E.
O.C. 2 Bn. R.C.E.

30 Sep 44

FIELD GENERAL COURT-MARTIAL

(Whether the accused to be tried is under his comd or not, a FGCM may on application to him be convened by any offr of Cdn Army Overseas, or of any other force if authorized in law, in immediate comd of troops on active service, subject to RP 105(C) and restrictions imposed by appropriate authy. AA 49, 50, RP 104-107, 114. As to the duties and privileges of the Convening Offr in dealing with the application see MML Chap V paras 20 and 23, RP 87(B).
There should be a separate Convening Order for each person to be tried separately by the same Court. RP 71(C), 109. As to separate charge sheets see RP 62, and as to separate trial on charges in the same charge sheet see RP 108. As to two or more accused charged jointly see RP 16, 109.
As to reasons for showing (a) permanent or confirmed rank, and (b) appmt, A/rank or A/appmt, if any, see AA 182, 183, fns, KR Can 302, 328, 330.)

ACCUSED.

Number.	(a) Prmnt R.	(b) Appmt, A/R or A/Appmt.	Full Christian Names.	Surname.	Unit.
C100191	Spr		Joseph Paul Gordon	FASSETTE	3 Bn RCE

CONVENING ORDER.

1. Whereas complaint has been made to me, the undersigned, that the person(s) named above as the accused, being subject to military law, has (~~have~~) committed the offence(s) set forth in the Charge Sheet(s) attached and on (date) 30 Sep 44 endorsed by me, (~~Command, Corps, Division~~), " To be tried by Field General Court-Martial ".

2. And whereas I am of opinion that it is not practicable that such offence(s) should be tried by an ordinary General Court-Martial ; (and that it is not practicable to delay the trial for reference to a superior qualified offr.)
(Delete part in brackets when not required for compliance with RP 105(C).)

3. I hereby convene a Field General Court-Martial to try the said person(s), and to consist of the Offrs appointed or detailed hereunder.

4. ~~I nominate as Judge-Advocate (a) the Offr so designated in (b) a Ld Offr as Deputy, for the reasons I have attached hereto.~~
(AA 49, RP 105(B), 107(A). Delete the whole or part, if not applicable.)

5. ~~I also appoint as Judge-Advocate the Offr mentioned hereunder.~~
(RP 106(E). Delete, if none appointed.)

PRESIDENT.

(Rank.)	(Must be named. RP 106.)	(Unit.)
Major	A.A. Ayer	2 Bn RCE

MEMBERS.

(Rank.)	(Named or detailed. RP 106.)	(Unit.)
Capt	R.C. Paris	2 Bn RCE
Lt	H.B. Edward	2 Bn RCE

WAITING MEMBER.

(Rank.)	(Named or detailed, if any. RP 106.)	(Unit.)
Lt or Capt	To be detailed by C.O.	3 Bn RCE

JUDGE-ADVOCATE.

(Rank.)	(Must be named, if any. RP 106.)	(Unit.)

On Active Service in the Fd

in France (Country.)

Dat 30 Sep 44

(Signed personally. RP 105 fn 2.) Lt-Col (Rank.)

Commanding 2 Battalion, RCE Convening Officer.

CONVENING OFFR WILL INITIAL ALL DELETIONS AND ALTERATIONS

(See overleaf for oaths and notes for use on trial.)

MEDICAL OFFICER'S REPORT

October 2/44

I certify that I have this day examined SPR FASSETTE J.P.G.

C-100191 3 Bn RCE and in my opinion he is fit

to undergo trial by Field Seaaral Court Martial.

CAPT RCAMC
Medical Officer 3 Bn RCE

Station FIELD

Date 2 OCT 44

Ex A p.1.

SUMMARY OF EVIDENCE

in the case of

C.100191 Sapper Joseph Paul Gordon, FASSETTE Bn HQ, 3 Bn RCE, a soldier of the Canadian Army placed on active service.

CHARGE: Army Act Sec.15(1)
ABSENCE WITHOUT LEAVE

The Commanding Officer directs that the evidence be taken on oath.

FIRST WITNESS: D128788 Cpl LEROUX, A. HQ Coy 3 Bn RCE having been duly sworn states:-

"On the night of 19 Sep 44 I was Cpl of the Guard. Between 1800 hrs and 1830 hrs I saw the accused, whom I recognize, leave the camp. The time he left was marked on the guard report. I did not see him again until today, 26 Sep 44. Spr FASSETTE should have been back in camp at 2200 hrs, the time when ALL passes are finished. I checked when all passes are finished. I checked the list of ORs on pass at 2200 hrs and saw Spr FASSETTE had not returned to camp. He did not return at any time while I was on duty, that is, before 1830 hrs, 20 Sep 44."

A Leroux Cpl.

(A. LEROUX)Cpl

The accused declines to cross examine the witness.

SECOND WITNESS: Lieut A.W. DOWDEN, Bn HQ 3 Bn RCE having been duly sw orn states:-

" On 26 Sep 44, at about 1630 hrs, I was returning to camp from LISIEUX when I noticed Spr FASSETTE, whom I recognize walking on the road in the direction of the Camp. I had the driver stop the car and Spr FASSETTE came up to it. I told him to get in the car, and he did and he told me he was returning to camp to give himself up. He drove back to camp, where I turned him over to the guard. He was properly dressed and sober, and appeared to have every intention of returning to camp when I saw him. I knew at the time that Spr FASSETTE was AWL, having heard it in the Orderly-Room. During our trip back to camp Spr FASSETTE told me that he had gone to DEAUVILLE on 24 hours rest, had drank a little and had been induced to stay away longer by others. He mentioned Spr TREMBLAY as one of the others.

A E Dowden Lt.

(A.E. DOWDEN)LIEUT.RCE
Bn HQ 3 Bn RCE

The accused declines to cross-examine the witness.

4

Ex A p2.

The accused was cautioned as follows:-

Do you wish to make any statement or to give evidence on oath? You are not obliged to say anything or give evidence unless you wish to do so, but whatever you say or any evidence you give will be taken down in writing and may be given in evidence.

After the above caution the accused elected to make a statement as follows:-

Statement NOT on oath by C.100191 Sapper Joseph Paul Gordon FASSETTE, Bn HQ, 3 Bn RCE:-

On the evening of the 19th September I went down to a cafe in La BOISSIERE. While in there Spr TREMBLAY came in and we had some drinks together. The drink was supposed to be cider. He asked me to go to DEAUVILLE with him, and after a few more drinks I went. After a few days away, I got fed up and decided to return to the unit and give myself up.

J P G Fassette

(C.100191 Spr FASSETTE, JPG)

The accused does not call any witnesses for the defence.

I certify that the foregoing Summary of Evidence consisting of two pages was taken down by me in the presence of the accused and that Rules of Procedure 4(c),(B), (E), (F) have been complied with.

H C Edwards Capt

(H.C. EDWARDS)CAPT.RCE
3 Bn RCE

FIELD
27 Sep 44

IN MITIGATION OF PUNISHMENT BY LT. J.R. POWER 3 BN R.C.E.

I have known Spr Fawcette for the past year. He was also attached to my platoon for four months when he was on a DK course. I have always found him reliable and interested in his work. Have never had reason to lay a charge against Spr Fawcette while he was with me

J.R. Power Lt.

Ex. "B"

M.F.B. 355
12M—8-40 (6435-6)
H.Q. 1772-39-620

STATEMENT AS TO CHARACTER AND PARTICULARS OF SERVICE OF ACCUSED

Number	Rank	Name	Regiment (or unit)
C.100191	Sapper	Joseph Paul Gordon PASSETTE	Bn HQ, 3 Bn RCE

1. The following is a fair and true summary of the entries in the ~~Conduct Sheets~~ Regimental and Squadron, Battery or Company Conduct sheets of the accused, exclusive of convictions by a Court-Martial or a Civil Court, ~~Air Force Act~~ of summary awards under Section 47 of the Army Act and of cases in which trial has been dispensed with.

	Within last 12 months		Since enlistment	
For AA 15 (1)	one (1)	times	AA 8 (2)	one (1) times
For AA 19	one (1)	times	AA 15 (1)	one (1) times
For		times	AA 19	two (2) times
For		times		times

Number of instances of gallantry or distinguished conduct NIL

or,

~~There are no entries in the conduct sheets of the accused.~~ NIL

NOTE.—If the charge is for drunkenness, the entries for drunkenness must be stated separately.

2. The accused has not been previously convicted

or,

~~Previous convictions of the accused by a court-martial or a civil court, of summary awards~~ under ~~Section 47 of the Army Act and dispensations with trial under Air Force Act A.F.A. 73 are set out in the Schedule annexed to this statement.~~ NIL

3. The accused is not under sentence at the present time

or,

~~The accused at the present time is under sentence for beginning on the day of~~ NIL

4. The accused has been in confinement awaiting trial on the present charges, for NIL days in civil custody, and 6 days in military custody, making a total of 6 days in custody, of which NIL days were spent in hospital.

5. The present age of the accused according to his ~~record of service~~ attestation paper is 20 3/12 yrs

6. The date of his ~~commission~~ attestation specified in his ~~record of service~~ attestation paper is 23 Apr 42

7. The service which the accused is allowed to reckon towards discharge is n/a

8. The accused is entitled to reckon n/a service for the purpose of determining his pension, etc.

9. The accused is in possession of or entitled to no ~~air force~~ military decoration, or ~~air force~~ military reward (or is in possession of or entitled to). State any ~~air force~~ military decoration or reward.

10. (If the accused is a warrant officer.) The accused before he was made a warrant officer last held the regimental rank of n/a

11. (In the case of an officer.) The accused holds in the Royal Canadian Air Force the rank of ..... Permanent Force
dated n/a ....., and in his regiment (or corps) unit, the rank of .....
dated .....

12. The accused has served as a non-commissioned officer continuously, without reduction, to the present date:—

In the rank of n/a ..... Date of promotion.
In the rank of ..... years.
In the rank of ..... years.
In the rank of ..... years.

NOTE.—If any matter in any of the above paragraphs cannot be stated from the Regimental books, the paragraph must be struck through.

SCHEDULE

Of convictions by a court-martial or civil court, of summary awards under Section 47 of the Air Force Act, and of cases in which trial has been dispensed with of accused, Number ..... Rank .....
Name ..... of ..... Regiment

NOTE.—A verbatim extract from the regimental books stating these convictions and dispensations with trial must be inserted.

Description of Court by which tried	Date and Place of Trial	Charge upon which convicted	Sentence of the Court	Punishment Remitted
		NIL		

I hereby certify that the foregoing schedule of convictions and dispensations with trial is a true extract from the regimental books in my custody.

Signed this 27 th day of Sep 44 H Edwards Capt

The above statement (with the schedule of convictions and of cases in which trial has been dispensed with) is read, marked ..... signed by the president, and annexed to the proceedings.

EX "C"

MFM 6 (AFB 122) 40/P&S/136 (3438)

No. C100191 Name FASSETTE, J.P.G. | Sqn, Battery, or Company | Corps RCE | Date of enlistment 23.4.42 | GC Badges | Service or Proficiency Pay n/a

Date of last entry in Company Conduct Sheet 20.9.43 | No and date of last drunk nil | Period not reckoning towards freedom from extra fine n/a | Sheet No 1 | Signature OC Company, etc | Character

Place	Date of offence	Rank	Cases of drunkenness	OFFENCE	Names of Witnesses	Punishment awarded	Date of award or of order dispensing with trial	By whom awarded	Remarks
Previous sheet destroyed in accordance with CARO.2084 - 27 Nov 42									
FIELD	28.2.43	Spr	FIRST	AA.19 at approx. 0015 hrs 28 Feb 43 at Whitley was found drunk (1st Offence)	Documentary	Admonished	2.3.42	C.A.Mitchell Lt.Col	
FIELD	12.5.43	Spr		AA.8(2) Used threatening language to superior officer	Cpl Parent Spr Canuel Cpl Brisson	10 days FP Depr 10 d.p. FR&I.149(1)(b)	13 May 43	VS.Thompson Lt.Col	
FIELD	31.5.44	Spr		AA.Sec.15(1) AWL 22 hrs	Sjt Martel L/Sjt Chapleau	Summ.Forf 7 days pay FR&I. 149(2)	2.6.44	Maj.JJJW. DUSSAULT	Auto.Forf one day's pay FR&I.149(1)(a)

(PTO)

Place	Date of offence	Rank	Cases of drunkenness	OFFENCE	Names of Witnesses	Punishment awarded	Date of award or of order dispensing with trial	By whom awarded	Remarks
FIELD	28 Aug 44	Spr	Light Offence	AA.Sec.19 WOAS., Drunkeness (2nd Offence)	RSM Claridge Spr Groulx Spr Tremblay	FINED $5.00	30.8.44	Lt.Col Geo.W.Smith	

"CERTIFIED TO BE A TRUE AND CORRECT
EXTRACT FROM THE REGIMENTAL BOOKS
IN MY CUSTODY"

H.C. Edwards Capt

(H.C. EDWARDS)CAPT.RCE
ADJT. 3 Bn RCE

H.Q.C. 55-F-868 CONFIDENTIAL

DEPARTMENT OF NATIONAL DEFENCE — OTTAWA, CANADA

SUBJECT

FIELD GENERAL COURT-MARTIAL

FASO, PHILIP VINCENT H-676[illegible]

CONFIDENTIAL
H.Q.C. 55-F-868

CENTRAL REGISTRY	DATE	D.A. OR A.F.	INITIALS	REFERRED TO	FOR	INITIALS	DATE
				(If papers for which interest cannot be expressed on one line are routed here "With Minute")			2-12-46

OVERSEAS COMBINED

NOTICE

1. Files should be retained no longer than absolutely necessary. If a file is frequently needed at short intervals, it is better to R.F. it for two or three days than keep it out of Central Registry indefinitely. This ensures it being completed and kept in order, and also avoids other indexes or papers going to the wrong.

2. Central Registry should be notified whenever a file is passed direct to another branch.

3. The originating officer should have the subject title inserted.

PASS THIS FILE IN ENVELOPE

RECORDED AT CMHQ IN AB 168 5X-52

CFA96 (In lieu of AFA31)
40/P&S/1698 (49'01)

FIELD GENERAL COURT-MARTIAL

4/38B

Convened by Order of Brig G W TARLETON DSO MC Comd Brussels Gn dated 3 Dec 45

ACCUSED.

(As to the trial of two or more charged jointly see RP 16, 71, 109. As to reasons for showing (a) permanent or confirmed rank, and (b) apptmt, A/rank or A/apptmt, if any, see AA 182, 183, fns, KR Can 308, 328, 330.)

Number.	(a) Prmnt R.	(b) Apptmt, A/R or A/Appmt.	Full Christian Names.	Surname.	Unit.
H 67665	Pte		Philip Vincent	FASO	1 Cdn Army Car Coy RCASC att Cdn Sec HQ Brussels Gra

PROCEEDINGS REVIEWED

9 Jan 46 D J Brodie maj

REVIEWING OFFICER, JAG BR

PROCEEDINGS OF TRIAL.

Held in the Fd in (*country*) BELGIUM on (*date(s)*) 6 DEC 45

38/135

RECORD FORM A—OPENING PROCEEDINGS AND ARRAIGNMENT.

A1. The President, Members, ~~waiting Member, JA, if any, and Offrs under instr, if any,~~ assemble, and the Court is closed. B

(PRINTED MATTER, NOT IN ITALICS FOR GUIDANCE, WILL BE DELETED, IF NOT USED OR APPLICABLE, AND INITIALLED BY PRES OR JA. The Schedule referred to throughout is on p 4. Citations do NOT include all relevant fmn ROs. For guidance on procedure when a variation in this form arises, see form for GCM in MML pp 741 to 759. A brief record of such variation will be made and given a number having reference to appropriate or preceding para number herein. See back of Convening Order, CF A95, for oaths and instrs on how to record addresses, evidence, etc, which instrs are hereafter called "Notes". As to general provisions for conducting the trial see AA 53, RP 56, 63-70, 73, 74, 94, 103, 119, 132.)

A2. The President initials and lays before the Court the Convening Order and Charge Sheet(s) attached thereto.(1) B
The Court is satisfied that it is properly convened and constituted(2), accused is ~~(are)~~ amenable to military law, and B
each charge discloses an offence.(3)

(1. As to use of Summary of Evidence see RP 17 fn 6. 2. AA 49, 50, RP 105-107. 3. RP 11-13, 23, 24.)

A3. The Court is opened. The accused is ~~(are)~~ brought before the Court. At 1120 hours trial commences.

A4. The Prosecutor produces a Medical Certificate that accused is ~~(are)~~ fit to undergo trial by court-martial.(1) B
~~The Prosecutor informs the Court that accused elected to be tried by court-martial instead of being dealt with summarily by the CO.(2)~~ B

(1. KR Can 557. 2. AA 46(B), RP 60 fn 1. For effect see KR Can 563(c). Delete, if not applicable.

~~A5. President to accused: Do you object to ..... as interpreter ? Ans .....~~ B

~~The Interpreter is sworn.(1) Do you object to ..... as shorthand writer ? Ans .....~~ B
~~The shorthand writer is sworn.(1).~~

(1. RP 72. Delete, if none employed.)

A6. The Convening Order and names of the President and Members of the Court are read to the accused.(1)
President to accused: Do you object to be tried by me as President or by any of the Members of the Court ?

Ans NO SIR.(2)

(1. RP 110. 2. If no objection, waiting member retires. RP 68(B). If objection, see procedure AA 51, RP 25, 71, 18, MML p 742.)

A7. The President, Members, ~~JA, if any, and Offrs under instr, if any,~~ are sworn.(1) The following are the B
ranks, names and units of the offrs comprising the Court, etc:

President	Major	F A BAILLARGEON	Gen List	1 Cdn C M Centre
Member	Capt	D L MACDONELL	Cda Scottish	1 Cdn C M Centre
Member	Capt	R G L MILES	RCA	1 Cdn C M Centre
~~Judge Advocate~~ B				
Prosecutor	CAPT	PTH O'NEILL		1 CDN CM CENTRE
Defending Offr	CAPT	DB MACKENZIE		1 CDN CM CENTRE

Questions by President: Is the Prosecutor a lawyer ? Ans YES Is the Defending Offr a lawyer ? Ans YES(3)

(1. RP 26, 27, 109, 111. List of offrs under instr will be returned separately with proceedings for information of Conv Offr.)
(2. If Pros a lawyer and Def Offr not, accused is entitled to an adjournment when RP 89 (B) and fn 2 were not followed. See DI p 3.)

A8. The accused H67665 Pte Philip Vincent FASO before arraignment make(s) (no) ~~(a)~~ plea B
.....(1)

(1. If a special plea is made for separate trial on one or more charges (RP 62(E), 108), or as to the jurisdiction of the Court (RP 34, 35(A), 113), or in bar of trial (RP 36), or as to accused's mental fitness to stand trial (AA 130, RP 57), or by one of several accused charged jointly to be tried separately (RP 16, 71), such plea, the addresses made in support or against, the evidence, if any, and finding as recorded per Notes. For forms of record see references in fns to RoP cited. Insert in AB rank and name of the accused making the plea.)

A9. The accused is ~~(are)~~ arraigned ~~(separately)~~ on all charges in the charge sheet.(1) The accused does ~~(do)~~ B
not object to any charge.(2) There is no amendment to be made to the Charge Sheet.(3) The President records the pleas in Part I of the Schedule.

(1. RP 31, 112. See para 1 of Instrs p 2. When more than one Charge Sheet see RP 62; when several accused to be tried separately see RP 71(C), and use separate copies of CF A96 to record proceedings. 2. RP 32, RP 33. If otherwise, delete and make appropriate record per Notes.)

A10. The Court (is closed and) considers the Instrs on Procedure after Arraignment at top of p 2. The pro-
ceedings are continued on Record Form 2

PRESIDENT OR JA WILL INITIAL ALL DELETIONS AND ALTERATIONS.

cdn Sec HQ Brussels Gra
Vol 1 Page 122

INSTRUCTIONS ON PROCEDURE AFTER ARRAIGNMENT.

1. *The accused may not plead or be found Guilty on more than one of two or more charges laid in the alternative.* (*RP* 37(*A*).) *As to withdrawal of alternative charges by Prosecutor see RP* 35(*C*). *No other charge can be withdrawn for any reason without authy from Convening Offr. If Convening Offr concurs, Court may accept plea of Guilty to lesser, etc, offence.* (*RP* 44(*H*).) *Accused may change a plea of Not Guilty to Guilty during trial.* (*RP* 38.) *As to refusing to plead or not pleading intelligibly see RP* 35(*A*). *As to plea when sentence may be death see RP* 35(*D*).

2. *The proceedings on each charge sheet* (*RP* 62) *after arraignment will be conducted as follows in the respective circumstances stated :*

I. If pleas to all charges are GUILTY, use Record Form B below.

II. If pleas to all charges are NOT GUILTY, use Record Form D on p 3.

III. If pleas to some charges are GUILTY and to other charges are NOT GUILTY and,

(*a*) *Such mixed pleas occur when there are no alternative charges in the Charge Sheet, use Record Form C below.* (*RP* 37(*A*).)

(*b*) *Such mixed pleas occur in a set of two or more charges laid in the alternative, see RP* 37 (*A*) *and fn* 2 *as to discretion of Court,* (*i*) *to try the accused on all such alternative charges as if he had pleaded Not Guilty thereto, or,* (*ii*) *to record the pleas as the findings of Court. After deciding between* (*i*) *and* (*ii*), *Court will proceed under foregoing instrs as may be appropriate to result of its decision. See MML p* 744 *Instrs* (2).

3. *As to responsibility of President to accused see RP* 59, 60(*C*) ; *powers and duties of JA see RP* 103 ; *duty of Prosecutor see RP* 60(*A*) (*B*) ; *duty and privileges of accused and Defending Offr see RP* 60(*C*), 87(*C*), 91, 92 ; *swearing and withdrawal of witnesses from Court see RP* 81, 82 ; *questioning of accused see RP* 80, 87(*C*), 92(*B*), *and of witnesses see RP* 83-85 ; *calling or re-calling of witnesses by Court, etc, see RP* 75-79, 86, 116 ; *use of Summary of Evidence at Trial see RP* 17(*E*) *fn* 6 ; *and responsibility of JA or Pres to record proceedings see RP* 94, 96.

RECORD FORM B—PROCEEDINGS ON PLEAS OF GUILTY TO ALL CHARGES.

B1. The President or JA, if any, complies with RP 35(B) by explaining to the accused the nature and meaning of the charge(s)[1], and that on his plea of Guilty there will be no regular trial but merely a consideration of the sentence to be awarded after he has been given an opportunity to make a statement in reference to the charge(s), call witnesses as to character and make an address in mitigation of punishment.[2]

(*1. RP 35 fn 3. 2. MML p 54 para 47.*)

B2. President to accused : The Court will now receive any statement you desire to make in reference to the charge(s).[1] If it appears from your statement that there are circumstances which indicate that you do not understand the effect of the plea of Guilty[2], or which show provocation or extenuation in respect of which in your interest the witnesses for the Prosecution should be examined[3], we shall advise you to change your plea to Not Guilty. In making a statement you will not be sworn or subject to cross-examination ; and anything you say will not be used in evidence against you after you change your plea. If, however, it appears to the Court that your statement affects only the amount of punishment to which you are liable, you will not be advised to change your plea and you will be given an opportunity later to prove your statement by sworn testimony, if you so desire.[4]

President to accused : Do you wish to make a statement ? Ans.....[5]

(*1. RP 37(B). 2. RP 37(D) fn 6. 3. RP 35(B) fn 3, para 3, MML p 54 para 47. 4. See para E3 of Record Form E. 5. Statement, if any, recorded per Notes.*)

B3. The Court considers the accused's statement.[1] The Court decides (not) to advise accused to change his (their) plea(s) of Guilty to Not Guilty on.....charge(s). The accused is (are) so informed, and he (they) change(s) his (their) plea(s) on.....charge(s). Part I of the Schedule is amended accordingly.

(*1. Court may be closed to consider the statement. Delete whole or part not used.*)

B4. On the charge(s) to which the plea(s) of Guilty is (are) not changed the President records finding(s) of Guilty in Part I of the Schedule.[1]

(*1. RP 35(B). If any plea(s) is (are) changed, use Record Form C or D as appropriate.*)

B5. The Summary of Evidence is marked Ex....., initialled and read aloud by the President.[1]

(*1. If there is no Summary, or if it is inadequate, comply with RP 37(B). If there is any evidence inconsistent with any plea standing as Guilty, Court will advise accused to change such plea and, if changed to Not Guilty, try such charge(s) by use of paras D1 to D8 inclusive of Record Form D on p 3. RP 37(D).*)

B6. The accused having been found Guilty on one or more of the charges, the proceedings are concluded by using Record Form B on p 6.

RECORD FORM C—PROCEEDINGS ON MIXED PLEAS OF GUILTY AND NOT GUILTY.

C1. As to the charges on which accused pleaded NOT GUILTY the trial is continued by using paras D1 to D8 inclusive of Record Form D on p 3 before proceeding with C 2.[1]

(*1. RP 37(A) (E).*)

C2. The charges on which accused pleaded GUILTY are read to him (them) again, and the trial is continued by using paras B1 to B5 of Record Form B above.[1]

(*1. Under B5 such parts only of the Summary of Evidence are read as relate to the charges dealt with under C2. If any plea is changed to Not Guilty, trial thereon proceeds by complying with paras D1 to D8 inclusive in Record Form D on p 3 and making an appropriate record thereof on a separate sheet.*)

C3. The accused having been found Guilty on one or more of the charges, the proceedings are concluded by using Record Form E on p 6.

PRESIDENT OR JA WILL INITIAL ALL DELETIONS AND ALTERATIONS.

MEDICAL OFFICERS CERTIFICATE

(KR(Can) Para 557)
(CMHQ GL 173)

I certify that I have this day examined H 67665 (Number)

Pte Faso P V and in my opion he is

~~Fit~~ ~~Unfit~~ to undergo trial by Court-Martial.

Station Brussels.

Date 6 December 45

Capt Young WH (sgd)
Medical Officer
Capt

(Unit) Medical Offices
HQ BRUSSELS GARRISON

FIELD GENERAL COURT-MARTIAL

(Whether the accused to be tried is under his comd or not, a FGCM may on application to him be convened by any offr of Cdn Army Overseas, or of any other force if authorized in law, in immediate comd of troops on active service, subject to RP 105(C) and restrictions imposed by appropriate authy. AA 49, 50, RP 104-107, 114. As to the duties and privileges of the Convening Offr in dealing with the application see MML Chap V paras 20 and 23, RP 87(B).

There should be a separate Convening Order for each person to be tried separately by the same Court. RP 71(C), 109. As to separate charge sheets see RP 62, and as to separate trial on charges in the same charge sheet see RP 108. As to two or more accused charged jointly see RP 16, 109. As to reasons for showing (a) permanent or confirmed rank, and (b) appmt, A/rank or A/appmt, if any, see AA 182, 183, fns, KR Can 308, 328, 330.)

ACCUSED.

Number.	(a) Prmnt R.	(b) Appmt, A/R or A/Appmt.	Full Christian Names.	Surname.	Unit.
H 67665	Pte		Philip Vincent	FASO	1 Cdn Army Car Coy RCASC att Cdn Sec HQ Brussels Grn

CONVENING ORDER.

1. Whereas complaint has been made to me, the undersigned, that the person(s) named above as the accused, being subject to military law, has (~~have~~) committed the offence(s) set forth in the Charge Sheet(s) attached and on (*date*) 3 DEC 45 endorsed by me, (~~or by an offr of my staff for me~~), " To be tried by Field General Court-Martial ".

2. And whereas I am of opinion that it is not practicable that such offence(s) should be tried by an ordinary General Court-Martial ; (~~and that it is not practicable to delay the trial for reference to a superior qualified offr.~~)
(Delete part in brackets when not required for compliance with RP 105(C).)

3. I hereby convene a Field General Court-Martial to try the said person(s), and to consist of the Offrs appointed or detailed hereunder.

4. ~~I am unable to appoint (a) three Offrs to form the Court, (b) a Fd Offr as President, for the reasons I have attached hereto.~~
(AA 49, RP 106(B), 107(A). Delete the whole or part, if not applicable.)

5. ~~I also appoint as Judge Advocate thereat the Offr mentioned hereunder.~~
(RP 106(E). Delete, if none appointed.)

PRESIDENT.

(Rank.)	(Must be named. RP 106.)		(Unit.)
MAJOR	F A BAILLARGEON	Gen List	1 Cdn C M Centre

MEMBERS.

(Rank.)	(Named or detailed. RP 106.)		(Unit.)
CAPT	D A MACDONELL	Cdn Scottish	1 Cdn C M Centre
CAPT	R G L MILES	RCA	1 Cdn C M Centre

WAITING MEMBER.

(Rank.)	(Named or detailed, if any. RP 106.)	(Unit.)

JUDGE-ADVOCATE.

(Rank.)	(Must be named, if any. RP 106.)	(Unit.)

On Active Service in the Fd

in BELGIUM (Country.)

Date 3 DEC 45

G W Tarleton

(Signed personally. RP 105 fn 2.)

(G W TARLETON)

BRIGADIER (Rank.)

Commanding Brussels Garrison

Convening Officer.

CONVENING OFFR WILL INITIAL ALL DELETIONS AND ALTERATIONS

4/38A (FASO (To Hdq of AFAS) 40/3 & 5/1697 (4051))

(See overleaf for oaths and notes for use on trial.)

CHARGE SHEET

The accused, H-67665 Pte Philip Vincent FASO, 1 Cdn Army Car Coy, RCASC, attached to Cdn Sec HQ Brussels Garrison, a soldier of the Canadian Army Overseas, is charged with:

FIRST CHARGE
Sec 40
Army Act

WHEN ON ACTIVE SERVICE, CONDUCT TO THE PREJUDICE OF GOOD ORDER AND MILITARY DISCIPILINE

in that he

in the Field, at NIJMEGEN, Holland, at approximately 2100 hrs 30 Oct 45, improperly and without authority took and used C.M. Vehicle No. CZ 4289114 for private purposes, resulting in damage to the said vehicle in the amount of £20-0-0.

SECOND CHARGE
Sec 40
Army Act

WHEN ON ACTIVE SERVICE, CONDUCT TO THE PREJUDICE OF GOOD ORDER AND MILITARY DISCIPLINE

in that he

In the Field, in Holland, on or about 30 Oct 45, being the driver of a C.M. Vehicle and having been involved in an accident, failed to report the accident to the proper authorities.

R Fagan

(R F Fagan) Lt Col
Comd
Cdn Sec HQ Brussels Grn

in the Field
29 Nov 45

To be tried by Field General Court-Martial

G. N. Tarleton

(G N TARLETON) Brigadier
Commanding
Brussels Garrison

In the Field
3 DEC 45.

In the case of

H67665 - Pte. Davo - P.W. - 1st Can. Army Can. Coy R.C.A.M.C. attd H.Q. 1st Can Inf. Brigade for.

K.C. Inf. 40. 1st Charge. Accused pleads "Not Guilty"

K.C. Inf. 40. 2nd Charge. Accused pleads "Not Guilty"

First witness —

Capt. G.F.H. Ritchie - Can Inf. H.Q. Brigade for.

having been duly sworn states —

On the morning of Sunday 30th Oct 45, I was returning from a business trip and on my way back to Brussels, decided to stop over night at 1st Bn. Highlanders Headquarters of 153rd Edmn. Officers Mess - it was approx 1920 hrs. when we reached 1st Bn. and already dark, one vehicle C.2 4289 114 was parked in front of 153rd Edmn. Inf. and as soon as arrangements could be made I asked Capt Macdonald that the vehicle should be parked as soon as possible at the parking lot and if we should not do that right away - I had never been to 1st Bn before - I went with Capt Macdonald to his room, and we had our meal and so on. To the Canteen, [illegible] I saw Capt Macdonald when he left to was sworn at approx 2150 hrs. Vehicle No. C.2. 4289 114 was [illegible] for use by Educ. Service - at C.3.8. and was being used for [illegible] by Educ. Officer - I do not have responsibility for the vehicle, but in Brussels in mind — I am basing the use of vehicle — I did not give any authority for the use of vehicle as the

month of 30 Oct 45 — I was my dinner
time at 3 pm after midnight, when I
was brought up to my sleeping quarters
on my instructions and there gave me
his account of what had happened
to the vehicle — He was in a great
state of agitation and made a statement
to the effect that he had not parked
the vehicle in the parking lot, as he
had been instructed to do, but left it
in mobile condition in front of Edin.
Hut and had gone off some distance in
general direction of main highway, some
miles. Later he heard sounds of a vehicle
being driven away and on his return back
in time to see what he believed to be
but was unable to identify
what the vehicle was. He then left
between 1130 and 1200
not the Edin Hut and then wandered around
in a state of agitation almost fainting
looking for the vehicle or help - and
finally came to the Edin Hut, where I was sleeping
in the 2 tier bed and then came to
speak to me. As soon as I understood
his account of the vehicle I arranged
Capt. Macdonald and me went
to the Parking lot and the Sgt i/c with
Capt. Macdonald, 2 ors and myself took
an H.U.P. to investigate and look for the
vehicle — We found the vehicle near
a place called Oss turn off on the
main highway between Nijmegen and
's Hertogenbosch — It was lying on its
side in a ditch in a damaged condition
We found the vehicle at approx 0200
hrs. 31 Oct 45. It was identified
by 2 ors as our vehicle.

re ret'd to Nijmegen, where we reported the supposed theft, finding and identification of which to The Pro Info. Post.

Cross examination

I did not know that I had a reputation for being absent minded - I cannot answer as to the question of my having left the drivers without instructions as to feeding and sleeping arrangements, The drivers were with the 1st Tank and my own 1st when I presumed would make arrangements for the drivers to eat. I did not see anyone tell him where he could get his supper - I remember I enquired about sleeping accomodation for drivers and 1st, arrangements were made for drivers and 1st sleeping quarters. I am not positive that my drivers were informed of this. I had a 1st with me in this trip. He had no authority to authorise use of vehicle

By the Court

I made up the work ticket for this trip. which detailed the trip - We were returning to Brussels from Apeldoorn

R.P. 83(6) complied with.

dB

2nd witness for prosecution

H32052 PSM Giles T.S. 13 Cdn Pro Coy. having been duly sworn states,

On 31 Oct 45 on information received I wrote down the number of a vehicle on that date CZ 428 9114. I detailed Cpl Harris to investigate an accident in which this vehicle was supposed to have been involved in B

On 1 Nov 45 as a result of information received I saw the accused in the presence of Capt Petrie after which I cautioned him. I wrote the caution down, read it over to accused, he then read it and afterwards signed it. He then made a statement. I did not threaten accused. I cross examined him to a certain extent I did not make any promises of any kind

Trial within a trial

Cross-examination.

I did not give him quite a grilling. I was trying to find out who the other people were who were involved in the other vehicle. It was about 1600 hrs when I talked to accused. I started talking to him about 1530 hrs. I did not break him in 30 minutes. I did not say that he would talk or else. I don't know why he talked. There was certain evidence against him at that time. "The time vehicle stolen." The time he reported it. and that he asked a Sgt to go with him to Tilbury. There was no threat, promise or duress made to accused to get him to make statement I did not trick him into it.

By the Court

The statement was written down by myself. I read the statement over to accused. He read it and afterwards he signed it. I recognize the statement I signed as a witness.

Defending Officer through Court.

Capt Petrie and Cpl Harris were present when accused signed the statement.

Cpl Harris is at Repat Depot in Nijmegen and Capt Petrie is here in Brussels. Capt Petrie did not take part in the questioning of accused. He was mum.

By the Court.

I heard about the vehicle morning 31 Oct 45 about 0930 hrs. The Osa turn off is about 15-18 miles from 4 Bn to the best of my knowledge. Osa turn off would be towards Belgium from 4 Bn.

RP 83(8) complied with.

The accused #67665 Pte Fasso P.V. having been duly sworn states,

I joined Army Nov 42. Came overseas Jul 43. I am 25 yrs old. I heard the evidence of RSM Giles about the statement I made to him. It was a Friday afternoon that he talked to me. This interview took place upstairs in one of rooms where he stays. Capt Petrie and Cpl Harris were also present. I was called up to the room. It was the first time I was questioned. They told me to sit on a chair. The RSM said to tell the truth or he would get it out of me someway or else. That's all that was said by Sgt Major. After he said that. I made a statement

which he took down in writing. I was not asked any questions while statement was being written. I simply dictated it and it was written down. I gave the statement because I was threatened. I was in an accident, the first in my life. My back was injured. It affected my nerves. I was going around in a daze. All I remember is getting hit. I feel alright now. It took me 3 days to get over it.

Cross-examination

~~RSM Gibbs~~ I did not think RSM Gibbs was good fellow day he questioned me. I went to grade 6 in school. I can understand English well. I understood the caution I think. I read it over myself. I understood it. I understood that I did not have to say anything but there was the threat. The SM told me to sign the caution. I don't think

he said "You must sign it." He did not say I had to sign it. I signed it of my own free will and understood it.

Re-examination

I signed the caution because I was nervous and just took pen and signed it.

RP 73(3) complied with.

Capt DEH Petre having been already sworn to examined by the Defending Officer.

I was present when accused was questioned by RSM Giles. As I recall it was on Thursday of that week which would be 1 Nov 45 between 1500 and 1600 hrs.

The questioning was done almost entirely by RSM Giles. The odd question was put in by Cpl Harris, but investigation was done by RSM Giles. The way in

in which the questioning took place was to ascertain who was responsible for taking of the vehicle and it was conducted with object of ~~solicit~~ eliciting a confession from accused. ~~It was~~ The S.M. told accused that from his knowledge of human nature, his experience, and from information ~~claimed~~ retained, that he was convinced that accused was responsible and it would be much easier ~~and~~ for himself and all concerned if he confessed. He ~~said he~~ came from same place as accused and that was to make confession come more easily. When this had gone on for 20 min to ½ hr It was suggested that I leave the room. Cpl Harris came with me. ~~and a conversation~~

and I was not present when confession signed.

Cross-examination

I have been an Officer in the Army since 10 Jan 43. My understanding at time was that no threat should be used to extract confession. RSM Giles did not threaten accused, but told him that he was there to get to truth and would stick at it until he did. ~~He also~~. In my opinion RSM tried to get thing over as quickly and painlessly as possible. I would not say that he was trying to scare the accused. If accused had been sure of himself he could have held his ground. I do not remember RSM promising accused anything. ~~I think accused made statement~~. During

my presence the accused was not subjected to any coercion, threat or bribe.

By the Court

Cpl Harris and I were out of room when confession was signed. We were out of the room a matter of minutes. The accused was cautioned in my presence. I do not remember him signing anything in my presence. He was cautioned before questioning. That was the first thing in the proceedings. No notes were made by S.M. during the questioning. After RP 83(B) complied with, witness wishes to add the following explanation:-

I mean I don't recall accused signing any caution but when I came back into the room. The statement was taken down by S.M and then read by accused ~~in my presence~~. RP 83(B) complied with.

12

Objection by Defending Officer 12A
Reply by Prosecutor 12B
Court is closed to consider the objection

Court is re-opened and the President announces that the objection of the Defending Officer is disallowed and rules that statement made by accused is admissable in evidence.

2nd witness for prosecution.

R.S.M Giles (continued)

I have the statement which accused made. I recognize it by my handwriting. I now produce same, marked exhibit "A" and read to Court.

RP 43(B) complied with.

The prosecution informs the Court that Capt MacDonald, Capt Friel and Cpl Harris, witnesses named in the summary are not now available.

The defence does not request these witnesses for cross-examination

Objection of Defending Officer. 129

1. The Defence submits that the Prosecution has not satisfied the onus upon it of proving the alleged Statement was given freely and voluntarily.
2. If it is admitted, it is a travesty of justice.

D Allen Capt

XB

 Contention of admissibility for Crown

I have listened to the eloquent plea of the defence counsel as to why the accused's statement should not be admitted. He has referred to "the Beast of Belsen" & other monsters, but I ask the court does R.S.M. Giles resemble the beast of Belsen? I think not.

The accused has stated that he was threatened by the R.S.M. & that he was scared into making a statement but he is conveniently vague about what scared him. The last witness Captain Petrie, has said that the R.S.M. did not threaten coerce or promise the accused anything to obtain the statement.

The point is Mr President, that behind all the subterfuge of words by the defence counsel lies the cold fact. The accused could read, he was Cautioned & such was the desire of the R.S.M. that exact procedure should be

followed that the accused read the caution
understood it, Signed it & then made
a voluntary Statement. On the evidence
of the accused & Capt Petrie it is the
contention of the Prosecution that the Statement
must be admitted.

F. H. Hilliard Capt

Submission by Defending Offrs p 13
Reply by Prosecutor p 14
Summing up by Prosecutor p 15
" " " Def. Off. p 16
Plea in mitigation p 17

KB

Submission of Defending Officer.

1. The Defence submits the Prosecution has not made out a prima facie case — one on which a jury could convict. You have ruled that a certain statement allegedly made by the accused, is admissible. You must now consider its weight as evidence. If your doubts as to its reliability are really substantial, I submit there couldn't be a conviction and you ought to dismiss the First Charge forthwith.

2. A similar submission is made with regard to the Second Charge, on the same grounds. In addition, however, there is no proof of non-reporting, no evidence as to where or to whom he ought to have reported, and the affirmative evidence that the accused was injured, dazed and bewildered.

3. It is submitted both charges ought to be dismissed.

D. Mead Capt.

14 I denial of Submission

The defend appears to me to be raising the question of the statement which the court has admitted. It is the contention of the prosecution that if the circumstance surrounding the taking of the statement were so close to being outrageous, the court would have rejected it.

Therefore it must be regarded as evidence & it is corroborated by the Evidence of Capt Petrie as to exact timings & this must be regarded as corroborative evidence. Therefore the Prosecution has established a case on both charges.

V. B. Hallett Capt

15 I Summing up of Pte Fass

I see no necessity to go into a lengthy speech in Summing up the evidence in the first charge.

It seems apparent to the court that Pte Fass did take on this particular night a certain Military Vehicle improperly & without authority therefore he is guilty of the charge.

It is not possible for the prosecution to produce evidence of the amount of damage to the H.M. so I ask the court for a special finding.

J. D. McNeill
Capt.

Closing Address of Def. Officer.

1. If the Court finds this accused guilty, they must do so on his own statement, something which most Courts are reluctant to do. Statements are not always reliable and the circumstances under which this one was obtained suggest this may belong in that class.

2. The accused cannot be found guilty in the wording of the particulars of the first (and now the only) Charge, as there is no proof of any damage.

D. Stuart Capt

Plea in Mitigation.

(1) You have found the accused guilty of the First Charge, presumably with a Special Finding, ruling out any suggestion of damage. In other words you have decided that this boy took a vehicle — the one he customarily drove — on an unauthorized occasion. I doubt if there are many people in this Courtroom who have not done the same.

(2) In view of his absolutely clean record, and the trivial nature of the charge, I submit the Court can very properly deal with him lenient ly.

D'Allard Capt.

D'Auvergne Pers.

1st November 1945

Statement of H67665 Pte Fass P.V.

I have been cautioned by R.S.M. Giles T.S. 13 Provost Coy and understand that I do not have to make a statement unless I wish but anything I say will be taken down in writing and may be give as evidence

States P. V. Fass

About 0915 Hours 30th Oct 1945 I Left Brussles to drive Capt Petrie to H.Q. 6.T.N. at Appledorn. We arrived there around three o'clock. Later we returned to Nijmegen arriving at 4 Bde about seven o'clock. I then had my supper. Later I was instructed by Capt Mc Donald to take my H.U.P. to the car park. The time was around nine o'clock. I took the vehicle and instead of going to the car park I proceeded toward Tilburg with the intention of seeing my girl friend. I had proceeded about twenty miles from Nijmegen when I was struck from behind by another vehicle. The impact turned my H.U.P. over on its side. At the time of the accident I was traveling about six M.P.H. as it was very foggy. I got out of my vehicle and was dazed. I sat around for a little while, after which I got a ride to Nijmegen. I got back to 4 Bde around eleven thirty when I reported to Capt Petrie that my H.U.P. had been stolen. As to the people in the other vehicle I do not know what happened to them.

I have read over the above statement and it is true

P. V. Fass

Statement taken down by H32052 R.S.M. Giles T.S. 13 Provost Coy at 1600 Hours 1st Nov 1945

Witness
H32052 T.S. Giles R.S.M.
C47136 Cpl Hall Provost Cpl.

EXHIBIT "A"
[illegible] Pte

ARMY FORM B. 296 (WAR.)

Statement as to Character and Particulars of Service of Accused.

(For Use at Trials by Field General Courts-Martial only).

Number.	*Rank.*	*Name.*	*Regiment (or as the case may be).*
H-67665	Pte	FASO PV	Cdn Armd Car Coy-att Cdn Sec HQ Brussels Grn

NOTE.—The Field Conduct Sheet is to be produced in Court with this statement but is not to be annexed to the proceedings. The numbers herein stated should correspond with the number of ENTRIES in the Field Conduct Sheet, prominence being given to the most serious offence in each entry. If the charge is for drunkenness or absence without leave, the entries for drunkenness or absence, as the case may be, should be stated separately. Any recognised special acts of gallantry or distinguished conduct recorded on the Field Conduct Sheet should also be inserted here.

1. The following is a fair and true summary of the entries in the Field Conduct Sheet of the accused, exclusive of convictions by a court martial or a civil court :—

For ORIGINAL MFM 6 NOT AVAILABLE times.

For _____ times.

For _____ times.

For _____ times.

EXHIBIT "B" Chandler Jr Res

Date of first entry in Field Conduct Sheet _____

Date of last entry in Field Conduct Sheet NIL

2. Previous convictions of the accused by a court martial or a civil court are set out in the Schedule overleaf.

*Strike out if not applicable.

*3. The accused at the present time is under sentence for NIL beginning on the N/A day of N/A

4. The accused has been awaiting trial on the present charges for NIL days in civil custody ; and for 36 days in military custody, *i.e.*, 32 days in open arrest, 4 days in close arrest ; of which Nil days were spent in hospital.

5. The present age of the accused is 25 years

6. The date of his attestation / ~~calling up for military service~~ is 9 Nov 42

7. The service which the accused is allowed to reckon is 3 years 17 days

**State the military decorations (if any) held by accused.

8. The accused is in possession of**

9. *(If the accused is a warrant officer or N.C.O.)* The accused has served continuously without reduction, to the present date —

Date of Promotion.

In the substantive rank of ///////

In the war substantive rank of ///////

In the acting rank of ///////

INSTRUCTION.—*If any matter in any of the above paragraphs cannot be stated from the regimental books the paragraph must be struck through.*

SCHEDULE OF CONVICTIONS BY A COURT-MARTIAL OR CIVIL COURT.

SUMMARY AWARD UNDER SEC 47 AA AND OF CASES IN WHICH TRIAL HAS BEEN DISPENSED WITH OF ACCUSED

Description of Court by which tried.	Date and Place of Trial.	Charges upon which convicted.	Sentence of the Court.	Punishment remitted or sentence suspended.
		ORIGINAL MFM 6 NOT AVAILABLE		

I HEREBY CERTIFY that the foregoing particulars, which have been extracted from the regimental books in my custody, are correct to the best of my knowledge and belief.

Signed this 30th day of Nov 45

Malcolm J Capt

No. H67665 Name Pte WASO PV | Sqn, Battery, or Company | Corps (TEMPORARY SHEET) | Date of enlistment | GC Badges | Service or Proficiency Pay | 3/17 MFM 6 (AFB 122) 40/T&S/130 (5412)

Date of last entry in Company Conduct Sheet | No. and date of last drunk | Period not reckoning towards freedom from extra fine | Sheet No | Signature OC Company, etc | Character

Place	Date of offence	Rank	Cases of drunkenness	OFFENCE	Names of Witnesses	Punishment awarded	Date of award or of order dispensing with trial	By whom awarded	Remarks
Brussels	2Nd Nov 45			ORIGINAL SHEET NOT AVAILABLE					
					("A J CORMIER") Capt Staff Capt "A" Cdn Sec H Q Brussels Gen				

Certified true copy of original

Officer ic Regimental Books and Documents

Ex 11 Bde

(PTO)

NOTICE

RF 76

Take notice that at your trial by Court Martial, Capt J N MILL, Adjt 1 Cdn Army Tps W/S RCEME, will be called to give evidence to the effect that the cost of repairs to Chev H U F C/4289114 was Parts - £12-0-0, Labour - £8-0-0, Total Cost £20-0-0.

(F T H O'MEILL) Capt
Prosecutor

TO: H-67665 Pte FASO P V

I acknowledge receipt of a copy of the above notice this 25 day of November 1945.

(Witness)

H-67665 Pte FASO P V

Summary of Evidence

in the case of H67665 Pte Faso PV

1 Cdn Army Car Coy RCASC att Cdn Sec HQ Brussels Lyn Cdn Army Overseas

charged with using a WD veh without authority.

By direction of the CO the evidence is taken on oath.

First Witness

Capt AEH Petrie Cdn Sec HQ Brussels Lyn sworn states:—

I arrived at 4 Bn at Nijmegen from Apeldoorn in my HUP CZ 4289114 driven by Faso at about 1920 hrs 30 Oct 45. I met Capt JRA Mac Donald and suggested to him that the vehicle should be parked for the night at once. At about 2250 hrs I again asked Capt Mac Donald whether the vehicle had been parked. I gave nobody authority to use my HUP that night. There is nobody else who could have properly given authority to use that vehicle that night. At about 0003 hrs 31 Oct I was awakened and Faso reported to me that the vehicle had been stolen. I asked him how it happened.

~~When he had been~~ He was in a state of agitation. He told me that he had left the vehicle in a mobile condition with work ticket inside parked in front of Cdre Hut at 4 Bn and had gone away ~~2 hrs~~ about 100 yds towards the highway. He said that A few minutes later, he heard a veh being driven away and saw it turn left going out the gate. He said He then rushed back to find the veh gone. He said This happened between 9.30 and ten o'clock. Then he said he wandered around in great practically fainting looking for the vehicle. Finally he said about a quarter to twelve he ~~am~~ woke the Sgts and reported the theft to them.

I then woke Capt Mac Donald and we went to the vehicle park where ~~I~~ we took a Sgt and a HUP a Sgt took us and Faso in a HUP to look for the vehicle. We did not find it ~~I~~ in Nijmegen and went to 13 CBR Bn. From information received we went towards ~~s~~ Hertogenbosch and just East of the OSS rd we located the HUP which Faso identified. It was lying on its side in the ditch in a damaged condition. This was at about 0200 hrs 31 Oct. We returned to Nijmegen where I reported the incident to the Duty Cpl at the Cdn Pro Information Post

The accused declines to cross examine the witness.

W.H.O. Petrie, Capt.

AB

Second Witness

Capt J R A Mac Donald 2 3 Cdn Fd Educ Sec att 4 C B R Bn 2 C B R G

I certify that in my opinion the attendance of this witness is owing to the exigencies of the service not readily procurable and a written statement of his evidence signed by him has been read to the accused and is att hereto as Exhibit A.

P Orler maj

I do not require the attendance of Capt Mac Donald for the purpose of cross examination.
P. C. Two.

The accused was cautioned as follows:-

Q. Do you wish to make any statement or to give evidence on oath? You are not obliged to say anything or give evidence unless you wish to do so, but whatever you say or any evidence you give will be taken down in writing and may be given in evidence.

A. No sir

The accused does not call any witnesses at this time.

I certify that the foregoing summary of Evidence consisting of 3 pages was taken down by me in the presence of the accused and that R P 4 (C)(D)(E)(F) and (G) have been complied with.

In the Field 12 Nov 45

P Orler maj
Cdn Court Martial Centre

Additional Summary of Evidence in the case of H-67665 Pte FASO P V 1 Cdn Army Car Coy, RCASC, att Cdn Sec HQ Brussels Garrison, Canadian Army Overseas.

Charged with: Using a WD veh without authority.

By direction of the CO the evidence is taken on oath.

THIRD WITNESS — G-47136 Cpl HARRIS, V M 13 Cdn Pro Coy (Cdn Provost Info. Post, Nijmegen).

I certify that in my opinion the attendance of this witness is, owing to the exigencies of the service, not readily procurable and a written statement of his evidence signed by him has been read to the accused and is att hereto as Exhibit "B".

.....Capt.....

I do not require the attendance of Cpl HARRIS V M for the purpose of cross-examination.

P. V. Foss.....

FOURTH WITNESS — H-32052 RSM GILES, T S, 13 Cdn Provost Coy.

I certify that in my opinion the attendance of this witness is, owing to the exigencies of the service, not readily procurable and a written statement of his evidence signed by him has been read to the accused and is att hereto as Exhibit "C".

.....Capt.....
GINELL RSM GILES 13

I do not require the attendance of ~~Cpl HARRIS V M~~ for the purpose of cross-examination.

P.V. Foss.....

The accused was cautioned as follows:

Q — Do you wish to make any statement or to give evidence on oath? You are not obliged to say anything or give evidence unless you wish to do so, but whatever you say or any evidence you give will be taken down in writing and may be given in evidence.

A — NO, Sir

The accused does not call any witness at this time.

I certify that the foregoing Additional Summary of Evidence consisting of one page was taken down by me in the presence of the accused and that R P 4 (C)(D)(E)(F) and (G) have been complied with.

.....Capt.....

In the Field
Nov 45

Capt
1 Cdn Court Martial Centre

LIST OF WITNESSES

PROSECUTION

Capt AEH PETRIE	Cdn Sec H Q Brux Grn
Capt JRA MACDONALD	23 Cdn Fd Educ Sec, Att 4 CBR Bn 2 CBRG
G-47136 Cpl HARRIS VM	13 Cdn Pro Coy, Cdn Pno Information Post, Nijmegen
H-32052 RSM GILES TS	13 Cdn Pro Coy
Capt J N Mill	Adjt 1 Cdn Army Tps W/S RCEME (R P 76)

LIST OF EXHIBITS

Written statement of Capt JRA MACDONALD	"A"
Written statement of Cpl HARRIS VM	"B"
Written statement of RSM GILES	"C"

I, the undersigned, acknowledge having received one copy of the Summary of Evidence and one copy of the Charge Sheet, free of charge on 3 Dec 45. I acknowledge receipt of a copy of the Supplemental Summary on this date, also.

P.V. Faso
H-67665 Pte FASO PV

I, the undersigned, request the services of an officer to represent me at my trial by FGCM.

I request the services of CAPT D.B. MACKENZIE if he is available.

3 Dec 45

P.V. Faso
H-67665 Pte FASO PV

Exhibit A
preliminary

I am Captain J.R.A. MacDonald, of 23 Cdn Fd Educ Section, presently attached to 4 C.B.R.Bn, 2 C.B.R.G. At about 1900 hrs 30 Oct 45, Captain A.E.H. Petrie of Cdn Sec HQ, Brussells Grn, arrived at the Education Hut, 4 C.B.R.Bn in Niejmegen.

He complained of the poor lights of his vehicle and had decided to spend the night at 4 Bn. I told him that I would instruct the driver as to the disposal of the vehicle.

I gave the Driver directions to the Bn Veh Pk and told him to be sure that the vehicle was left there over-night.

At about midnight I was awakened and told that the veh had been stolen from its place in front of the Education Hut, at about 2130 hrs. In company, then, with Capt. Petrie, his Driver, and Sgt. Murray, Tpt Sgt of 4 Bn, I went in search of the vehicle.

We located it some miles from Niejmegen on the road to s'Hertogenbosch. It had been involved in an accident with a W.D. 15 cwt and was quite badly smashed. Both vehs were being guarded by Dutch police. They told us that two soldiers and a civilian girl had been removed to Hospital.

J.R.A. MacDonald, Capt.
(J.R.A. MacDonald) Capt
Educ Officer
4 CBRBn 2 CBRG

Exhibit "E"

NO. 13 CANADIAN PROVOST COMPANY.

13Prov/5-9-3
2 Nov 45.

Officer Commanding
13 Cdn Pro Coy

Alleged theft of W.D. H U P CZ 4289114
on charge to Cdn Sec H.Q. Brussels Garrison

1. At approx 0330 hrs, 31 Oct 45 a report was received f from Capt Petrie, Educational Officer, Cdn Section, H.Q. Brussels Garrison, at Coy H.Q. that the a/m vehicle had been stolen at approx 2130 hrs 30 Oct 45. The vehicle was on charge to H 67665 Pte FASO, P.V. ~~who claimed he had left it outside 4 Bn, Nijmegen at 2130 hrs and when he returned later it was missing~~.

2. At 1130 hrs 31 Oct 45 information was received that this vehicle had been involved in an accident at MR 548510, Nijmegen Oss Road. The vehicle having been abandoned after the accident. I detailed G 47136 Cpl Harris V.M. to make an investigation.

3. On 1 Nov 45 at approx 1600 hrs in consequence of information I received I interviewed H 67665 Pte FASO P.V., the driver of the m/n vehicle to whom it is on charge. After questioning him I cautioned him after which he made the following statement which is self explanatory:

BEGINS:

I have been cautioned by R.S.M. Giles, T.S., 13 Cdn Provost Coy and understand that I do not have to make a statement unless I wish, but anything I say will be taken down in writing and may be given as evidence.

STATES: (SIGNED) P.V. FASO

About 0915 hrs 30 Oct 1945 I left Brussels to drive Capt Petrie to H.Q. C.F.N. at Appeldoorn. We arrived there around three o'clock. Later we returned to Nijmegen arriving at 4 Bn about seven o'clock. I then had my supper. Later I was instructed by Capt McDonald to take my H.U.P. to the car park. The time was around nine o'clock. I took the vehicle and instead of going to the car park I proceeded towards Tilburg with the intention of seeing my girl friend. I had proceeded about twenty miles from Nijmegen when I was struck from behind by another vehicle. The impact turned my H.U.P. over on its side. At the time of the accident I was travelling about six m.p.h. as it was very foggy. I got out of my vehicle and was dazed. I sat around for a little while, after which I got a ride to Nijmegen. I got back to 4 Bn around eleven thirty when I reported to Capt Petrie that my H.U.P. had been stolen. As to the people in the other vehicle, I do not know what happened to them.

I have read over the above statement and it is true.

(SIGNED) P.V. FASO

Statement taken down by H 32052 R.S.M. Giles, T.S., 13 Provost Coy at 1600 hrs 1 Nov 45.
Witness: T.S. Giles, R.S.M.
G 47136 V.M. Harris, Cpl

ENDS.

4. I warned FASO that he would be charged with taking the vehicle without authority, failing to report an accident, and making a false statement thereby causing members of the Cdn

..... (CONT'D).....

(CONT'D).....

Provost Corps to be wrongfully employed investigating an alleged theft of a W.D. vehicle.

5. Pte FASO was turned over to Capt Petrie, who had him returned to Brussels Garrison.

6. For your information, Sir.

T. S. Giles

(H 32052 R.S.M. Giles, T.S.)
13 Cdn Pro Coy.

Exhibit 'B'

REPORT OF G 47136 Cpl V.M. HARRIS ON THE ABOVE ROAD ACCIDENT AND ALLEGED THEFT

Sir;

1. At approx 1130 hrs, 31 Oct 45 I was called to investigate the two vehicles which had been brought into 13 Cdn Pro Coy H.Q.. They were both H.U.P.s W.D. No.s CZ 4289114 on charge to Cdn Sec H.Q. Brussels Barrison. This vehicle had been reported stolen at approx 0330 hrs 31 Oct 45 by Capt Petrie, Educ offr of Cdn Sec Educ H.Q. Brussels Garrison. The other H.U.P. was W.D. CZ 4289252 on charge to Canadan Club, Nijmegen which was reported stolen at approx 2130 hrs by the Canada Club. ~~In the back of the vehicle was a ladies black coat, also it was covered with blood but the drivers of these vehicles left immediately after the accident and were not at the scene when the Dutch Police arrived. I checked all Hospitals and found that a Dutch woman had been admitted to the St. Canisius Ziekenjuis, St. Annastraat, Nijmegen at approx 0.30 hrs 31 Oct 45. Her name is Antoinette Beekers-Gils. She had been hitch-hiking to Breda to return to her home, Haagweg 196 Breda and was picked up by the driver of CZ 4289252 . There was also another soldier in this vehicle when the accident happened the woman was taken to the house of Van V. Lonb by these two soldiers whose names are unknown.~~

Added
V. M. Harris Cpl

2. ~~After leaving the house the two soldiers hitched a ride in the direction of Nijmegen. The woman was later evacuated to the hospital at Nijmegen.~~

3. ~~I contacted the Bn from which CZ 4289114 was stolen and the times of the supposed theft and the accident were approx 5 min apart and the accident happened approx 30 miles away so I determined that this vehicle had left 4 Bn earlier than 2145 hrs as this was the time it was supposed to have been stolen. On checking I found that no vehicles had left 4 bn lines between 2100 and 2145 hrs.~~ At approx 1500 hrs 1st Nov 45, H 67665 Pte FASO, P.V. who is Capt Petrie's driver of HUP CZ 4289114 was brought to 13 Coy H.Q. and questioned by R.S.M. Giles and myself and he gave a statement ~~admitting that he was the driver of this vehicle at the time of the accident~~. Efforts are still being made to locate the driver of the other vehicle.

4. For your information, Sir.

V. M. Harris

(SIGNED) V.M. HARRIS, CPL
13 Cdn Pro Coy.

Pl[illegible]here Loc[illegible] of Record.

RECO[illegible] FORM D—PROCEEDINGS ON PLEAS OF NOT GUILTY TO ALL CHARGES.

D1. President to accused : Do you wish to apply for an adjournment on the ground that any of the rules relating to procedure before trial have not been complied with, and that you have been prejudiced thereby, or on the ground that you have not had sufficient opportunity to prepare your defence ? Ans. NO SIR (1)

(1. If "yes", see RP 39(A) for procedure. Statement or evidence, if any, is recorded per Notes.)

D2. The Prosecutor makes ~~an~~ (no) opening address.(1)

(1. RP 39(B), 60(A) (B), 90, 92(C) (D). Record address per Notes, subject to RP 95(C).)

D3. The evidence for the Prosecution is taken.(1)

(1. RP 39(C), 114, KR Can 555. Record evidence per Notes. As to Prosecutor giving evidence himself see RP 39(D) (E).)

D4. The Prosecution is closed.(1) The Defending Offr submits that the evidence for the Prosecution does not establish a prima facie case against the accused on the FIRST AND SECOND charge(s).(2) The Court is closed, and considers the submission.(3) The Court is re-opened, and the President announces that the submission is disallowed on the FIRST charge(~~s~~), and allowed on the SECOND charge(~~s~~), and that, accordingly, the trial will proceed on the former, but the accused is ~~(are)~~ found Not Guilty on the latter charge(s).(4) B

(1. Delete remainder of this para. if submission not made. 2. Arguments on submission, answer and reply are recorded per Notes. 3. RP 40 fn 1. See MML p 72 paras 12-14 and p 81 para 42. 4. Delete part not used. If accused acquitted on all charges, use second alternative in para D8.)

NB : If trial proceeds, accused must be allowed great latitude in making his defence, and the Court should not stop his defence solely on ground of irrelevance. (RP 60(C), 114, 115.)

D5. President to accused : You will now proceed with your defence.(1) You may, if you wish, give evidence yourself on oath as to the facts or your character or both, in which case you will be subject to cross-examination.(2) You may, however, make a statement without being sworn, and you will not be subject to cross-examination.(3) But a statement which could have been made on oath will not carry with the Court the same weight as sworn testimony.(4) You may call witnesses in your defence and as to character, whether you give evidence or make a statement or do neither.

President to accused : Do you wish to give evidence yourself as a witness, make a statement, or do neither ?

Ans. DO NEITHER. Do you intend to call witnesses on your behalf ? B.

Ans. NO SIR. ~~Are they witnesses as to character only ? Ans.~~

(1. RP 115. 2. RP 40(A), see 80(D). 3. RP 40 fn 10. 4. RP 40 fns 2, 9.)

D6. Consequent on the answers recorded in para D5 the appropriate procedure for the defence is followed.(1)

(1. RP 114, 115, 116. For procedure see Notes on back of Convening Order, CF A95. Evidence for accused as to his character should, if in his interest, be given before the finding. See RP 46(A) fn 1, 86(C). Note the further opportunity in para E1 of Record Form E. Record per Notes addresses, statement, evidence and any summing up by the JA under RP 42, 103(e).)

D7. The Court is closed to consider the finding(~~s~~).(1) The finding(~~s~~) of the Court is ~~(are)~~ recorded in Part I of the Schedule.(2) The Court is re-opened. B

(1. RP 43, 117(A). See Notes in Part I of Schedule. 2. RP 44(A).)

D8. The President announces the finding(~~s~~), if any, of Not Guilty, and states to the accused that the finding(~~s~~) of the Court on the FIRST charge(~~s~~), being subject to confirmation, will be promulgated later.(1) B

~~Or, The President announces that the accused is found Not Guilty on all charges and is to be released forthwith, and that the proceedings are accordingly terminated. Part I of the Schedule is dated and signed.(2)~~ B

(1. AA 54(3) (6), RP 45, 120(A). 2. AA 54(3), RP 45, 117. This alternative announcement is not applicable when there are pleas of Guilty outstanding and dealt with under Record Form B or C.)

D9. The accused having been found Guilty on one or more of the charges, the proceedings are concluded by using Record Form E below.

RECORD FORM E—PROCEEDINGS ON CONVICTION BEFORE SENTENCE.

E1. President to accused : Do you wish to give evidence yourself or to call any witnesses as to your character ?(1)

Ans. NO SIR

(1. If evidence has already been given by accused or his witnesses as to his character, delete this para. RP 37(C) fn 4, 46 fn 1. Accused and witnesses are sworn. Evidence recorded per Notes.)

E2. The Prosecutor produces Statement(~~s~~) as to Character and Particulars of Service(1), and certified true copy ~~(copies)~~ of Conduct Sheet(~~s~~)(2), purporting to refer to the accused, which he submits to the Defending Offr for examination, and then to the Court for admission in evidence. The Court is satisfied that these documents refer to the accused, because (i) they purport to be signed in the manner required by AA 163(l) (g) (h), and (ii) they purport to refer to (a) soldier(~~s~~) having the same number, rank, name and corps as the accused. Admitted in evidence and marked Ex. B and Ex. C respectively.(3) B B

(1. MFB 355 or AFB 296. 2. MFM 6. 3. RP 46, KR Can 558. If above documents not produced, see RP 46 fn 1 para 1.)

E3. President to accused : Do you wish to address the Court on the Statement(~~s~~) and Conduct Sheet(~~s~~), and in mitigation of punishment ?(1) Ans. YES THROUGH MY DEFENDING OFFICER (2) B

(1. RP 37(C), 46(D). 2. Address, if any, recorded per Notes. Court should permit accused or his witnesses to prove on oath anything here or previously stated which would affect the amount of punishment. RP 37(F) fn 7.)

E4. The President states that the Court is closed to consider the sentence, and that the sentence to be awarded by the Court, being subject to confirmation, will not be announced, but will be promulgated later, and the proceedings in open court are accordingly terminated.(1)

(1. AA 54(6), RP 120(A).)

E5. The Court considers the sentence.(1) The President records the sentence in Part I of the Schedule, which is dated and signed by him ~~and the JA, if any.~~(2). B

(1. When several accused tried separately see RP 71 (D). One sentence only, comprised of the punishment or punishments laid down in AA 41, 44 and its proviso, is to be awarded to cover all charges in all charge sheets on which accused found guilty. RP 48. As to sentences see AA 44, 138, 182, RP 46-50, 69, 118, 119(A), KR Can 308, 330, 563-566, Overseas RO 309, 2323, MML p 60, 757-759. As to sentences assigned for civil offences by the law of England see AA 41(5), MML p 130. When accused already under sentence of imprisonment or detention see AA 44(1B), 68(1), KR Can 564. 2. RP 50. As to release from arrest by confirming Offr see KR Can 567. As to assembly and disposal of record after trial see Instrs on back of Convening Order.)

PRESIDENT OR JA WILL INITIAL ALL DELETIONS AND ALTERATIONS.

SCHEDULE.

PART I. PLEA(S), FINDING(S) AND SENTENCE.

Accused : H 67665 Pte Philip Vincent FASO, 1 Cdn Army Car Coy RCASC attd Cdn Sec HQ Brussels Garrison

Charge. (Insert "alternative" where applicable.)	Plea. (See Instrs p 2.)	Finding. (See note below.)	(Space for use as required for further charges, accused charged jointly, special findings, etc.)
1st AA 40	NOT GUILTY	GUILTY	with the words "to the amount of £20-0-0".
2nd AA 40	NOT GUILTY	NOT GUILTY	
3rd			
4th			
5th			
6th			

(Note : As to findings for lesser offences see AA 56, RP 44 ; findings on alternative charges see MML p 483 fn 4 para 2, RP 44 ; special findings see RP 44 and MML p 753, and in loss of kit see RP 44 fn 6.)

~~At present under sentence for..... beginning on (date).....~~ (1)

(1. Insert sentence being served, or delete, if not applicable. See RP 46(A). Information should be found on MF B355 or AF B296.)

Time in confinement awaiting present trial—a total of 4 days, of which nil days were spent in hospital.(1)

(1. See RP 46(A) fn 2. Information should be found on MF B355 or AF B296 admitted in evidence under E2.)

Sentence Awarded by the Court :

To forfeit all ordinary pay for a period of thirty (30) days.

~~(Sgd).....~~ Judge Advocate, if any.

6 Dec 45 Date awarded.

(Sgd) [illegible] President. (RP 45, 50.)

(See back of Convening Order as to assembly and disposal of record after trial.)

PART II. MINUTE WHERE CONFIRMATION RESERVED. (AA 54(5), RP 120(F), MML p 760.)

Date..... (Sgd)..... Commanding.....

PART III. DECISION OF CONFIRMING OFFR ON FINDING(S) AND SENTENCE.

(For duties and powers see AA 54, 57, RP 37(D) fn 6, 46(A), 51-56, 120, MML pp 759-761, KR Con 567-577. Acquittals require no confirmation and cannot be revised : AA 54(2). Sending back finding or sentence for revision by Court : AA 54(2), RP 120(G). If not confirmed, accused may be tried again : AA 157, MML p 64. Minute of confirmation or non-confirmation may be altered before promulgation : RP 53, MML p 65. Quashing after promulgation : KR Con 573. Duties and powers of reviewing offrs : AA 57, 57A, RP 53A, 54. The Confirming Offr must sign here personally. AA 172 fn 1.)

My decision on the finding(s) and sentence set forth in Part I is :

Confirmed

~~I direct that the accused be not committed to prison or detention barracks until further orders.~~(1)

(1. AA 57A. Delete if not used.)

Date 14 Dec 45

(Sgd) [illegible] Brigadier,
COMD ARMY TROOPS AREA,
FIRST CDN. ARMY
Commanding..... Confirming Officer.

PART IV. PROMULGATED AND EXTRACTS TAKEN. (RP 53, KR Con 576, 577.)

Accused.	Date.	Signature of Offr.
H-67665 Pte FASO PV	19 Dec 45	[illegible] Capt. for CORMIER Capt. A/Cdn Sec HQ Brussels Gro

Published in Cdn Army Staff Brussels CR No.25 of 19 Dec 45

ALL DELETIONS AND ALTERATIONS WILL BE INITIALLED.

H.Q.C. 55-F-869 CONFIDENTIAL

DEPARTMENT OF NATIONAL DEFENCE—OTTAWA, CANADA

SUBJECT

FIELD GENERAL COURT-MARTIAL

FARRIS, A.F. G-7094 GNR.

CENTRAL REGISTRY	DATE	D.A. OR G.F.	INITIALS	REFERRED TO	FOR	INITIALS	DATE
				(If purpose for which referred cannot be expressed on one line, enter here "With Enclosure")			2-12-46

CONFIDENTIAL
H.Q.C. 55-F-869

OVERSEAS COMBINED

NOTICE

1. Files should be retained by holders only when absolutely necessary. If a file is frequently needed at short intervals it is desirable that a duplicate be made. If a file is out of Central Registry indefinitely. This ensures it being completed and kept up to date, and also prevents other offices from
2. Correspondence should be confined to one subject. If a file is passed direct to another branch, the covering letter should bear the official file number.

PASS THIS FILE TO CENTRAL

Correspondence to be PINNED here.

Army Form A.3.

Form for Assembly and Proceedings of Field General Court Martial on Active Service.

PROCEEDINGS.

A.

Order convening the Court

On Active Service, this twelfth day of July, 19 41.

Whereas it appears to me, the undersigned, an officer in Command of Royal Canadian Artillery, 1st Canadian Division, on active service, that the persons named in the annexed Schedule, being subject to Military Law, have committed the offences in the said Schedule mentioned.

And whereas I am of opinion that it is not practicable that such offences should be tried by an ordinary General Court Martial; *[and that it is not practicable to delay the trial for reference to a superior qualified officer.]

* Omit where Convening Officer is a Commanding Officer or is of Field Rank.

I hereby convene a Field General Court Martial to try the said persons, and to consist of the Officers hereunder named.

* Omit if not applicable.

*[I am unable to appoint:—

*(1. ~~Three Officers to form the Court~~)

*(2. A Field Officer as President.)

*(3. ~~Three Officers having more than one year's service~~)

for the following reasons, namely:—]

President.

Rank.	Name.	Regiment.
Major	R.S. Dyer	3 Cdn Fd Regt

Members.

Rank.	Name.	Regiment.
Capt	J.R. Baird	1 Cdn Fd Regt
Lieut.	E.M. Echlin	1 Cdn Fd Regt

* Must be signed personally by the Officer actually in command at the time, and all alterations in the composition of the Court to be initialled by him.

*Signed A.E.D. Tremain (Brigadier)
(A.E.D. Tremain)
R.C.A. 1 Cdn Div.
Commanding Convening Officer.

SCHEDULE.

Number, Rank (a), Name and Unit of Accused (b)	Offence charged	*Plea	Finding, and if Convicted, Sentence (c)	How dealt with by Confirming Officer (d)
G.7094 Gnr. Farris A.F. 2 Cdn Fd Regt	1st Charge Sec. 18 (4) A.A. (See charge sheet annexed)	Not Guilty	Guilty 6 months detention Stoppage of pay of two pounds sterling (£2) to make good the loss to L/Sgt McKnight	I confirm the finding of the court but commute the sentence to 90 days detention and the stoppage of pay of two pounds sterling (£2) to make good the loss to L/Sgt McKnight [illegible] Brigadier

Special Finding

Guilty of the 1st charge with the exception that the date should be on or about 5-Jul-41.

* Question to be asked of accused, if he pleads not guilty (R. of P. 39 (a)):—
"Do you wish to apply for an adjournment on the ground that any of the rules relating to procedure before trial have not been complied with, and that you have been prejudiced thereby, or on the ground that you have not had sufficient opportunity for preparing your defence?"
Answer (to be recorded on separate sheet if necessary):—

(Signed) [illegible] (Signed) J. S. Caine Capt. R.C.A.
Commanding [illegible] Brigade (Convening Officer (a)) [illegible] Major R.C.A. President.
Commanding R.C.R. 1 Cdn Div.

(a) Appointment acting rank or acting appointment, if any, to be stated in brackets after the substantive rank.
(b) Unless unavoidable, not more than three names are to be entered on one form, and in serious cases one only.
(c) Recommendation to mercy, if any, to be inserted in this column.
(d) It is not necessary that the Confirming Officer should sign his name in this column. Initials are sufficient.
(e) Must be signed by the same Officer who signs on the first page, and all alterations in the first two columns of the Schedule to be initialled by him.

Evidence and Charge Sheets (if necessary) to be PINNED here.

B. Certificate of President as to proceedings.

I certify that the above Court assembled on the 17th day of July 1941, and duly tried the persons named in the Schedule, and that the plea, finding, and sentence in the case of each such person were as stated in the third and fourth columns of that Schedule.

I also certify that :—
1. The members of the Court
2. The witnesses
*(3. ~~The interpreter~~)
*(4. The officers under instruction)
were duly sworn.

* Omit if not applicable.

Signed this 17 day of July 1941.

[illegible] Major
President of the Court Martial.

C. Certificate in case of death sentences.

I certify that the terms of *A.C.I. 570 of 1918 have been complied with.

* See footnote (b) on page 762 M.M.L. 1929.

Signed this day of 19 .

President of the Court Martial.

D. Confirmation.

I have dealt with the findings and sentences in the manner stated in the last column of the Schedule, and, subject to what I have there stated, I hereby confirm the above findings and sentences.

*(~~I direct that the soldier named in the margin be not committed to prison until further orders.~~)

* To be omitted unless penal servitude or imprisonment having been awarded, the Confirming Officer either has no authority to commit to prison, or, having such authority, recommends suspension.

Signed this 21st day of July 1941

[illegible] Brigadier
Confirming Officer.

Promulgated and extracts taken in the case of 23d. Regt. R.C.A.

(a) (Dated) 22nd July 1941 (Signed) [illegible] Lt Col. O.C. 2nd Field Regt. R.C.A., C.A.S.F.

Promulgated and extracts taken in the case of

(Dated) (Signed)

Promulgated and extracts taken in the case of

(Dated) (Signed)

(a) When several cases are promulgated in one unit on the same day the Officer need only sign once.

[illegible] Wt. 46223—921 200 m. 1/40 P. St. G. 64

CHARGE SHEET

The Accused, G-7094 Gnr. FARRIS, A. F., 8th Fd. Bty, 2nd Fd. Reg't., R.C.A., a soldier of the Canadian Army (overseas) is charged with;

FIRST CHARGE

Sec 18(4) A A

WHEN ON ACTIVE SERVICE, STEALING PROPERTY BELONGING TO A PERSON SUBJECT TO MILITARY LAW,

in that he,

at Addington, Surrey, on the 5th day of July, 1941, stole the sum of Two Pounds Sterling (£2.), the property of No. G-7118 L/Sgt., McKnight, J.R., 8th Fd. Battery, 2nd Field Regiment, R.C.A., a person subject to Military Law.

.....Lt.-Col.
(C. E. de Pencier,)
Commanding 2nd Fd. Reg't. R.C.A.

Form "A"

PROCEEDINGS OF A FIELD GENERAL COURT MARTIAL HELD IN THE FIELD ON THE 17 DAY OF July 1941

Trail of G 7094 Gnr Farris A.F. 8 Fd Bty.

Prosecutor. Lieut G.A. Eaton 3 to Regt RCA. (Barrister)

Defending Officer. Lieut W.W.V. Foster 3 to Regt RCA (Barrister)

Officers under Instruction. Lieut G.N. Chambers 3 to Regt RCA.

1. The order convening the Court is read in the presence of the accused.

2. The accused is asked the following questions:-

Do you object to be tried by the President or any Member of the Court, whose names you have heard read over.

Answer - No.

3. The President, Members, Judge Advocate, Officers under Instruction, Shorthand Writer, and Interpreter are duly sworn.

4. (a) The accused having pleaded guilty to the charge(s) P.F. 35 (B) is complied with.

5. The accused is asked the question at the foot of page 2 of A.F.A. 3. and his answer is recorded beneath the question.

6. The Prosecutor makes ~~(no)~~ (the following) opening address.

PROSECUTORS OPENING ADDRESS

It is the intention of the prosecutor to prove this morning that the accused Gnr. Farris, A.F. stole two, 1 pound notes from L/Sgt. McKnight, that he turned one of them into the Farm House Cafe in payment of a debt and to bring evidence to show you the identity of the notes; show that they were stole and to break up the explanation of the accused and to show you that he was in possession of the notes a short time after they were stolen.

FIRST WITNESS:

G7188, L/Sgt. McKnight, J.R. 8th Fd Bty 2 Cdn Fd Regt.

I am L/Sgt. McKnight, J.R. of the 8th Fd Bty, 2nd Cdn Fd Regt. On July 4th 1941 at approximately 1730 hrs. I went out for a game of golf. I left two, 1 pound notes in my wallet in the inside pocket of my tunic, which I hung in my billet, 9 Palace Green. The following morning at approximately 1100 hrs I discovered the notes were missing. I reported this theft to the Orderly Officer who was Lieut. Smibert. As I had taken down the serial numbers of these notes I had drawn on pay day I began checking the stores at the corner of Feather Bed Lane. In the Farm House Cafe I handed the slip of paper to the girl and asked her to check it over with the notes that she had taken in and which were in the till. She did this but they were not there. She called Mr. Little the proprietor of the shop, and I asked him if he had taken any one pound notes in. He said he had. He got one out of his pocket and it checked with one of the numbers on the slip of paper.

I made a note of the serial numbers on the back of my drivers license (drivers license shown as exhibit "A") because I have had some money stolen from the house before. The accused lives in the same billet as myself and he was in the house when I left to play golf. I was away about 4 hours. I know that the notes were in my wallet earlier in the afternoon because I checked to see if they were there but did not check them before going out to play golf. The accused was not living in my billet at the previous time my money was stolen which was approximately two months ago. There has been a bit of borrowing of money between the men in my house but none had been borrowed from me during the first part of July. The accused had not been in the habit of borrowing money from me.

SECOND WITNESS

Mr. C.A. Little

I am Mr. C.A. Little proprietor of the Farm House Cafe. On Saturday July 5th 1941 Sgt. McKnight came into the shop and was making inquiries of the assistant if any one had been in and had given in any pound notes. I

(To Sheet 2)

SECOND WITNESS CONT.

noticed him asking her and then she came over to me and said that the Sergeant wanted to see me. He asked me if I had taken any pound notes from any Canadians in the last few hours. I said yes, I had taken a pound note on the previous night from the accused. I took it in payment of 10 shillings he owed me. I gave him the change and put the note in my pocket. I am not in the habit of putting money in my pocket while in the shop but this was a personal note and also I was very busy at the time. I was given a slip of paper with serial numbers on it by Sgt. McKnight and compared the numbers with the pound note and one of them corresponded.
(pound note handed in as exhibit "B")
(slip of paper with two serial numbers on exhibit "C")

I got the ten shillings change, which I gave the accused, from my wife and the transaction took place in the kitchen of the cafe where he had come to see me.

PROSECUTORS CLOSING ADDRESS

A brief sequence of facts were given as shown from the evidence of L/Sgt. McKnight and Mr. Little.

Evidence as to the identity of the note and accessibility by the accused to the place where the notes were kept had been proved.

Submitted that the accused had not given a reasonable explanation as to how he had come into possession of the pound note.

DEFENSE'S CLOSING ADDRESS

Fundamental principle of English law - principle of any reasonable doubt.

Principle of innocence until proven guilty - para 67, page 57, M.M.L.

Reasonable doubt regarding note produced by Mr. Little.

Possession of goods recently stolen - Para 66, Page 124, M.M.L.

Gap in time when L/Sgt. McKnight checked his money.

Technical Points: Evidence showed money stolen on Friday, 4th July yet charge sheet showed money stolen on Saturday, 5th July 1941; evidence proved only one note was stolen.

Accused gave statement under oath.

Form B. Page 6

D E F E N C E.

The accused is informed of his rights in accordance with R.P. 40 (A) and Note 2 on page 644 of the Manual of Military Law, 1929 Edition.

The accused is asked the following questions:-

Q.1. Do you wish to give evidence as a witness?

A.1. Yes. (Evidence given on oath)

Q.2. Do you intend to call any other witnesses on your behalf?

A.2. No.

Q.3. Are they witnesses as to character only?

A.3. N.A.

G7094, Gnr. Farris, A.F. 8th Fd Bty 2 Cdn Fd Regt.

I am Gnr. Farris, A.F. of the 8th Field Battery, 2nd Cdn Fd Regt. On Friday 4-Jul-41 at 1730 hrs. I was getting ready in my billet to go out. I do not know the exact time I left but by the time I had caught a bus and reached Selsdon I noticed from a clock that it was just 6 o'clock (1800 hrs) or a little after. It would have taken me about five minutes to get there from my billet. I had a date for 7:15 P.M. (1915 hrs) and so had some time to wait. I had some change in my pocket which amounted to over a pound so went into a store and got a pound note for the silver. This left me with a little silver change of about three shillings. The shop I went into was a tobacco shop. I was paid two pounds on pay day which was on the 1st July. When I came out of the shop I saw that I had over an hour to wait before my date so I decided to go back to camp and see if there was any mail for me. I went back to camp and went over to the Quarter Master Stores but there was no mail for me. Then I went to the Farm House Cafe. When I got into the cafe it dawned on me that I owed Mr. Little ten shillings. I asked where he was and was told that he was upstairs. When he came down I gave him the pound note and he gave me ten shillings in return. The pound note that I gave him was the one I obtained in Selsdon. I sat in the cafe for a while and talked to some of the boys then caught a bus back to Selsdon in order to keep my date. I got back to my billet that night at approximately 2300 hrs and went straight to bed. On the following Monday I went into Selsdon with Mr. Smibers and Sgt. McKnight, we went to the tobacco shop and Mr. Smiber asked the girl if she had changed any pound notes for soldiers on Friday night. She said that she did not change a pound note for anybody. I have never borrowed any money from Sgt. McKnight but have done so from Mr. Little.

Form C.

AFTER FINDING.

Capt. F.W. Fullerton R.C.A. is sworn and states:-
I produce a certified true copy of A.F.B. 122 relating to the accused. (The said copy is marked D., signed by the President, and attached to the Proceedings).

Question to the Accused:

Do you wish to address the Court, or to call evidence as to character?

Answer: No.

The (Accused) (Defending Officer) makes the following plea in mitigation of sentence:-

Does the Accused wishe to produce a character witness?

A. Sir, the character witness, Lt. Turner is not available at the present time but I am sure thathe could be obtained if really necessary. If it is alright with the accused I will make this character ref for him.

I would like to say a word or two in connection of sentence in regard to the witness. The accused was a batiment to an officer Mr. Turner., who is now with the Flash Spotting Section of the Surve Regiment. I would just like to point out to the Court and the Court has already heard for themselves that he came over with the 1st Contingent in 1939. He was employed as a cook in the city of Moncton At that time he gave up that job to join the Army, came over with the 8th Field Bty to which he belonged in 1936. He could not keep up the Army life in peace time because his work would not allow it. You all know the sacrifice that he made. He hasa father and mother living, three brothers and two sisters. I would like to call the Court's attentionto his M.F.M. 6. His crime, one of them insubordination to a superior office is only one bad one. The other one A.W.L. is not to be treated so seriously. The reason that he gives for this insubordination to a superior officer is that he lost his head as a result of being posted to guard after he had just come off guard. In view of the fair record of the accused Iwould ask that the Court show what leniency they thinkis just and I think it is due in this case. That is all I have to say.

COURT IS CLOSED

Army Form A. 2038.

Identification Card for Mechanical Transport Drivers.

THE WAR OFFICE.

The undersigned L/Sjt. McKnight R.

(description) Dark Hair, Dark Complexion

6ft.

being employed on Military Service, is hereby authorized by the Secretary of State for War to drive a motor car, lorry, motor cycle or other mechanically propelled vehicle when on Government duty.

CANADIAN ACTIVE SERVICE FORCES

MAY 1941

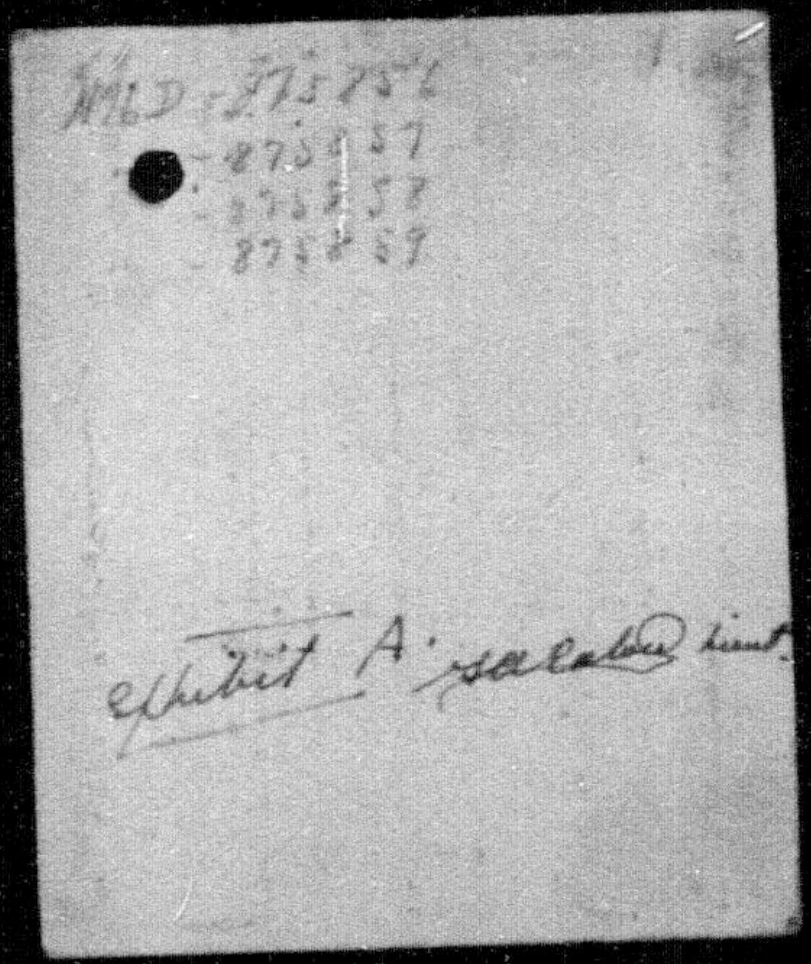
R. McKnight

Signature of Holder.

Permanent Under-Secretary of State for War.

Available from Apr. 1st. 41 to July 1st. 41.

16531) Wt.23875/1109 500,000 12/40 A.& E.W.Ltd. Gp.698 Forms/A.2038/3.



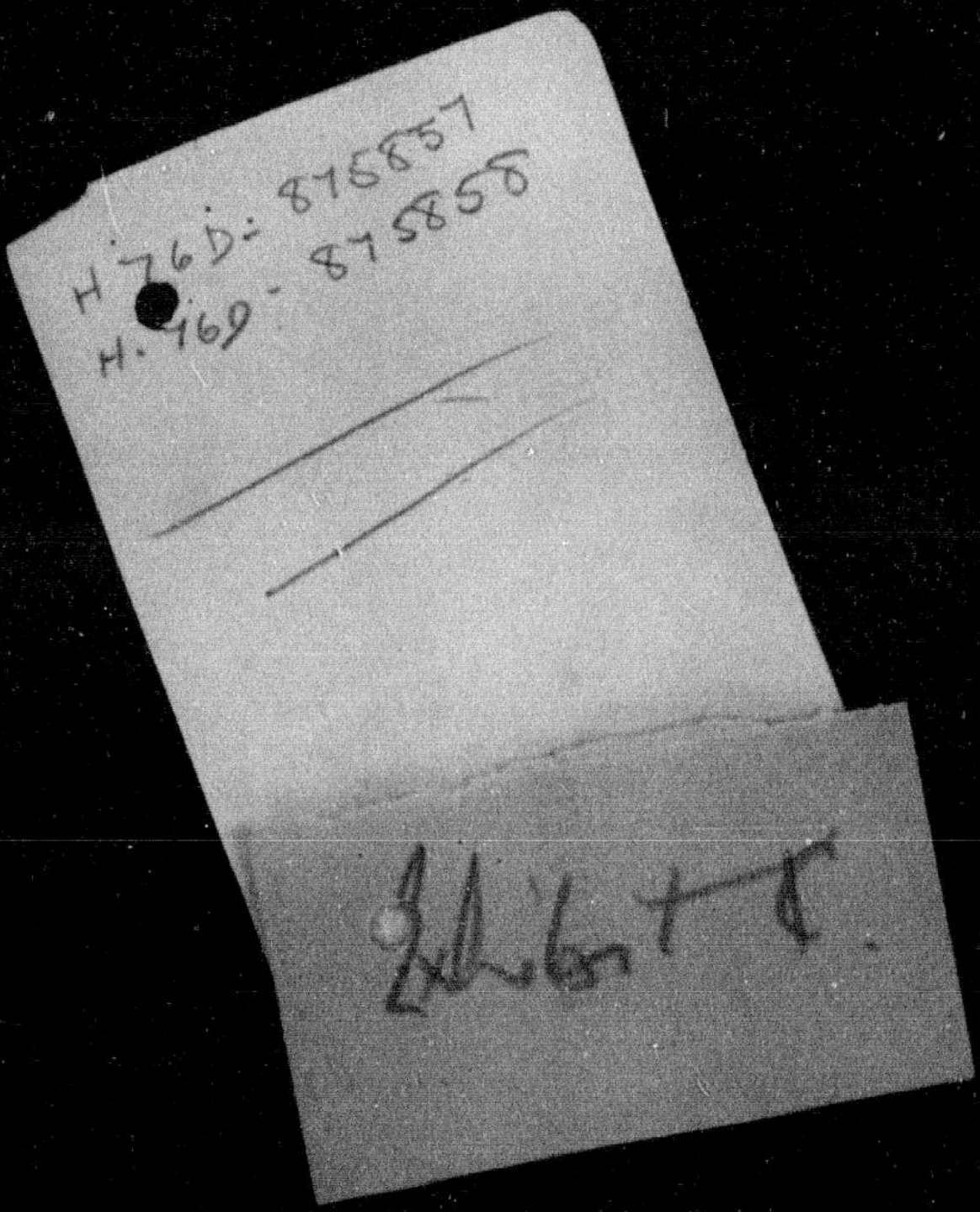

H 76 D: 875857
H 169 - 875858

Exhibit B

(Pound auto ordnance returned)

Exhibit A

MEDICAL OFFICER'S CERTIFICATE

I CERTIFY THAT No. G70 89 Gnr. Fascia, A. F. ..... REGIMENT
is fit ..... to undgo trial by Court-Martial.

John A. Brodrick
Capt. RAMC

17. July 41

Exhibit "D"

No. G7094 Name Gnr. Farris, A.F. Sqn., Battery, or Company 8 Fd. Battery Corps 2nd Fd. Brigade 1st Division. Date of enlistment 12/9/39 G.C. Badges Service or proficiency Pay (Sgd) R.P. Drummond Major. Character Fair.

M.F.M. 6 (A.F.B. 122) 500M.-8-40 (1703) H.Q. 1772-45-18

Date of last entry in Company Conduct Sheet — No. and date of last drunk — Period not reckoning towards freedom from extra fine — Sheet No. — Signature O.C. Company, etc.

Place	Date of offence	Rank	Cases of drunkenness	OFFENCE	Names of Witnesses	Punishment awarded	Date of award or of order dispensing with trial	By whom awarded	Remarks
ADDINGTON	16/10/40	Gnr		WOAS, AWL 38 hours (Sec 15 AA)	S/M.Sandiford	14 dys C.B.	19/10/40	Maj. Laceforf	2dys pay auto FRI 149/1/a.
ADDINGTON	5/11/40	"		WOAS, Disobeying in such manner as to show wilful defiance of authority when ordered to report for guard, told Sgt. Dryden "Go fuck yourself" (Sec 9(1)AA)	Sgt Dryden	14 dys F.P.	9/11/40	Lt.-Col.) Tremaine.)	Authority 1 Cdn Div.
ADDINGTON	1/6/41	"		WOAS, AWL from 1030 hrs 1/6/41 to 0800 hrs 2/6/41	Lt. Zavitz. Sgt.Sandiford	14 dys C.B.	2/6/41	Maj. Drummond.	Aut.Forf 1 dys pay FRI149/1/a
ADDINGTON	6/4/41	"		Failed to appear at place of Parade-TSW	Gillies	5 dys C.B.	7/6/41	Capt.Woolsey	
ADDINGTON	5/7/41	"		WOAS, AWL from 1600 hrs 5/7/41 - 0650 hrs 6/7/41 (14 hrs 50 mins)	L/SgtMcknight Sgt. French	7 dys C.B.	7/7/41	Maj. Drummond.	Auto Forf,1 dy pay FRI 149/1/a

CERTIFIED TRUE COPY. Capt.

Adjt. 2nd Field Regt. R.C.A., C.A.S.F.

(P.T.O.)

SUMMARY OF EVIDENCE

Summary of Evidence in the case of G7094 Gnr. Farris A. F. A soldier of the 8th Field Battery of the 2nd Cdn Field Regiment of the Royal Cdn Arty.

By order of the O. C. Lieut.-Col C. E. dePencier, the evidence was taken on oath.

1st. witness-- G7118 L/Sjt. McKnight J. R. of the 2nd Field Regiment R.C.A. having been duly sworn deposed as follows:-

I was paid on Tuesday July 1, 1941, four one pound (£1) notes, being my pay for the last half of June, by the paymaster Capt. H.V. Price. I have been in the habit of making a note of the serial numbers of the banknotes I receive in my pay ever since some money was taken from my billets about the middle of April 1941. I put down the nos. of these four notes on the back of my drivers license which I now submit in evidence or exhibit "A" The nos. were,

H 76 D 875856
H 76 D 875857
H 76 D 875858
H 76 D 875859

Friday evening July 4, 1941, I went to play golf at approx. 1730 hrs. and left two of these pound notes in my wallet in the inside pocket of my coat. My coat was hanging in my room at No. 9 PalaceGreen. The accused whom I recognize as Gnr. Farris lives in the same billet as I do, Namely No. 9 Palace Green. The serial numbers of the two one pound notes which were left in my coat were H. 76 D 875857 and
H. 76 D 875858

I am quite sure of this as I had noticed the numbers ended in a 7 and 8 that Friday afternoon.

At about 1100 hrs on Sat. July 5, 1941, I found that these two one pound notes were not in my wallet. I reported the loss to the Orderly Officer Lieut. K. P. Smibert, R.C.A. I went into the "Snack Bar" and checked the serial numbers of the notes in the cash register but with no success. I did the same at the Farmhouse Cafe. Notes No.
H 76 D 875857 and
H 76 D 875858, were not in the cash register. The owner of the cafe Mr. C.A. Little took a pound note from his pocket bearing the serial no. H 76 D 875857, which was the serial no. on one of the notes which had been in my wallet the previous night. I reported the fact to Lieut. K. P. Smibert.

J. R. McKnight

J. R. McKnight

The accused declined to question the witness.

2nd. witness-- C. A. Little, Esq. proprietor of "The Farm House Cafe" Addington, Surrey, having been duly sworn deposed as follows:

Sometime during the evening of Friday, July 4th. 1941 the accused whom I recognize as Gnr. Farris came into my cafe and gave me a pound note bearing serial No, H 76 D 875857 in payment of a debt of ten shillings. I was busy at the time and shoved the note in my pocket after giving Farris his ten shillings change. On Saturday, July 5th. in response to inquiries of Sjt. McKnight I showed him this note which I now submit in evidence as Exhibit "B". This was the only banknote I had in my pocket during the whole of Friday night and Saturday up to the time Sjt. McKnight came in. Sjt. McKnight read two serial Nos. to me before I showed him the note and one of them was the one printed on the face of the note, namely H 76 D 875857.

C. A. Little

The accused declined to question the witness.

3rd. witness-- D6628 L/Sjt. Morninge, C. E. of the 2nd. Fd. Regt. R.C.A. having been duly sworn deposed as follows:

I follow directly behind L/Sjt. McKnight on all pay parades and did so on the pay parade on Tuesday July 1st. 1941. I received four new one pound notes. I did not note the serial Nos. at the time but on Saturday, July 5th. 1941 in reply to queries by L/Sjt. McKnight I saw that the serial no. of the one banknote I had left was H 76 D 875862. I showed this note to Lieut. K. P. Smibert and I now submit it in evidence as Exhibit "C".

L/Sjt. Morninge, C. E.

The accused declined to question the witness.

4th. witness-- Capt. H. V. Price R.C.A.P.C. Paymaster 2nd. Field Reg't. R. C. A. having been duly sworn deposed as follows:

My custom of paying the men is to collect bundles of 500 one pound notes from the Field Cashier. These notes are almost always new notes the serial numbers of which run in sequence. For the pay of Tuesday, July 1st. I collected two bundles of 500 each of new one pound banknotes. I have no record of the serial nos.

H. V. PRICE. Capt.

The accused declined to question the witness.

5th Witness

Lieut. K. P. Smibert R.C.A. 2 Cdn Fd Regt. R. C. A. having been duly sworn deposed as follows:-

I was Orderly Officer on Sat. July 5, 1941, when the loss of two one pound notes was reported to me. As the result of subsequent investigation I placed Gnr. Farris, whom I now recognize as the accused, under close arrest. Monday morning July 7, in company with Gnr. Farris and Sjt. Morninge, I went at Marsh's Tobacco Store, 186 Addington Road, Selsdon. I asked the girl who had been in charge of the store on Friday afternoon July 4 between 1600 hrs and 1800 hrs, if she had given a pound note to Gnr. Farris in exchange for a pound in silver. She said she had not done so. In inquired if anyone else had been in the store during the above mentioned times. I was told another young lady had relieved her for tea. I asked the second young lady the same question and she replied that she had not given Gnr. Farris a pound note.

.....K.P. Smibert Lieut.....

The accused declined to question the witness.

After being duly cautioned in accordance with R. P. 4 (E) the accused declined to make a statement or to give evidence on oath.

I certify that R. P. 4 (c) (d) (e) & (f) have been complied with.

Taken down in writing by me in the presence and hearing of the accused this 8th day of July 1941.

.....
G. A. Eaton Lieut. R. C. A.

1CDA/5-4

22 Jul 41

2 Cdn.Fd.Regt.

Field General Court Martial.
G/7094 Gnr.Farris, A.F.
2 Cdn.Fd.Regt.

1. I direct that the one pound note No.H76 D875857, being exibit "A" of the marginally noted F.G.C.M. be returned to C.A.Little Esq., the rightful owner and a receipt for same obtained.

(A.E.D.Tremain).
Brigadier.
C.R.A. 1 Cdn.Div.

I hereby acknowledge receipt of One Pound Note No. H76 D875857.

Date 22/7/41 ..... C.A.Little
(C.A.Little).

Army Form B296.

Statement as to Character and Particulars of Service of Accused.

67094 Gnr. Farris A.F. of the 2nd Field Regiment R.C.A.

NOTE.—The Regimental and Squadron, Battery or Company Conduct Sheets are to be produced in Court with this statement but are not to be annexed to the proceedings.

†See Para. 664, K.R., 1935.

1. The following is a fair and true summary of the entries in the Regimental and Squadron, Battery or Company Conduct sheets† of the accused, exclusive of convictions by a court martial or a civil court, of summary awards under Section 47 of the Army Act, and of cases in which trial has been dispensed with :—

*The numbers herein stated should correspond with the number of *Entries* in the Conduct sheets, precedence being given to the most serious offence in each entry, and to any recognised special acts of gallantry or distinguished conduct.

	*Within last 12 months.		*Since Enlistment.	
For A.W.L.	3	times	3	times.
For Disobeying showing wilful defiance of authority Tried by C.O. with only 14 A.C.A. 1 each D.S.	1	times	1	times.
For Failing to appear at place of parade	1	times	1	times.
For		times		times.

INSTRUCTION.—If the charge is for drunkenness the entries for drunkenness must be stated separately and dated.

Number of instances of gallantry or distinguished conduct.

or,

There are no entries in the Conduct sheets of the accused.

2. The accused has not been previously convicted.

or,

Previous convictions† of the accused by a court martial or a civil court, summary awards under Section 47 of the Army Act, and dispensations with trial under Section 73 of the Army Act, are set out in the Schedule annexed to this statement.

Wt. 42848/604 50,000 7/40 W. B. Ltd. 51—8004

Description of Court by which tried, or status of Officer disposing of the charge or dispensing with Trial.	Date and place of Trial, or summary award, or of Order dispensing with Trial.	Charges upon which convicted, or in respect of which Trial was dispensed with.	Sentence of the Court or Authority disposing of the charge, or Order of the Dispensing Authority.	Punishment remitted.

I HEREBY CERTIFY that the foregoing Schedule of convictions and dispensations with trial is a true extract from the regimental books in my custody.

Signed this 17 th day of July 1941

Capt.
(F. W. Fullerton) Adjt.
2nd Field Regiment R. C. A.

3. The accused is not under sentence at the present time,

or,

The accused at the present time is under sentence for N.A.
N.A. beginning on the day of N.A.

4. The accused has been in confinement, awaiting trial on the present charges for Nil days in Civil Custody,
and 10 days in Military Custody.
Total 10 days.
Of which Nil days were spent in hospital.

5. The present age of the accused according to his ~~record of service~~ attestation paper is 23 years

6. The date of his ~~commission~~ attestation specified in his ~~record of service~~ attestation paper is 12 Sept 1939

7. The service which the accused is allowed to reckon towards discharge or transfer to the reserve is N.A.

8. The accused is entitled to deferred pay or gratuity in respect of N.A. years' service.

9. The accused is entitled to reckon N.A. years' service for the purpose of determining his pension, &c.

10. The accused is in possession of, or entitled to, no military decoration or military reward [*or* is in possession of *or* entitled to N.A.

11. (*If the accused is a warrant officer.*) The accused before he was made a warrant officer last held the regimental rank of N.A.

12. (*In the case of an officer.*) The accused holds in the army the rank of , dated , and in his regiment (*or* corps *or* department) the rank of dated N.A.

13. The accused has served as a non-commissioned officer continuously, without reduction, to the present date, N.A.

Date of Promotion.

In the rank of , years,
In the rank of , years,
In the rank of , years,

(INSTRUCTION.—*If any matter in any of the above paragraphs cannot be stated from the regimental books the paragraph must be struck through.*)

The above statement (with the schedule of convictions and of cases in which trial has been dispensed with) is read, marked , signed by the president, and annexed to the proceedings.

Schedule of Convictions by a Court Martial or Civil Court, of summary awards under Section 47 of the Army Act, and of Cases in which Trial has been dispensed with.

Army Number, Rank and Name 3-7094 Gnr. Farris A.F. of the 2nd Field Regiment R.C.A.

NOTE.—*A verbatim extract from the regimental books, stating these convictions and dispensations with trial, must be inserted.*

Description of Court by which tried, or nature of Officer dispensing with the charge or dispensing with Trial.	Date and place of Trial, or summary award, or of Order dispensing with Trial.	Charges upon which convicted, or in respect of which Trial was dispensed with.	Sentence of the Court or Authority disposing of the charge, or Order of the Dispensing Authority.	Punishment remitted.

(Continued overleaf.)

FLASH NUMBER ONE

FLASH NUMBER ONE

FLASH NUMBER ONE

FLASH NUMBER ONE

FLASH NUMBER ONE

FLASH NUMBER ONE

H.Q.C. 55-F-870

CONFIDENTIAL

DEPARTMENT OF NATIONAL DEFENCE OTTAWA, CANADA

SUBJECT

FIELD GENERAL COURT-MARTIAL

FARRINGTON, VINCENT ERNEST PTE.

CONFIDENTIAL
H.Q.C. 55-F-870

CENTRAL REGISTRY	DATE	P.A. OR A.F.	INITIALS	REFERRED TO	FOR	INITIALS	DATE
				(If purpose for which returned cannot be expressed on one line, enter here "Write Above")			2-12-46

OVERSEAS COMBINED

NOTICE

1. This should be retained no longer than absolutely necessary. If a file is frequently needed at short intervals, it is better to R.D. it for two or three days than keep it out of Central Registry indefinitely. This ensures it being completed and kept in order, and also gives other writers an opportunity to use same.
2. Correct Address should be pasted whenever a file is passed direct to another branch.
3. All enquiries on file should bear the correct file number.

PASS THIS FILE IN ENVELOPE

SCHEDULE.

PART I. PLEA(S), FINDING(S) AND SENTENCE.

Accused: B-37906 Pte Vincent Ernest FARRINGTON - CIC - 2 CITR

Charge. (Insert " alternative " where applicable.)	Plea. (See Instrs p 2.)	Finding. (See note below.)	(Space for use as required for further charges, accused charged jointly, special findings, etc.)
1st AA Sec 15(1)	Guilty	Guilty	
2nd			
3rd			
4th			
5th			
6th			

(Note: As to findings for lesser offences see AA 56, RP 44; findings on alternative charges see MML p 483 fn 4 para 2, RP 44; special findings see RP 44 and MML p 753, and in loss of kit see RP 44 fn 6.)

W At present under sentence ~~for~~ NOT beginning on ~~(date)~~ (1)

(1. Insert sentence being served, or delete, if not applicable. See RP 46(A). Information should be found on MF B355 or AF B296.)

Time in confinement awaiting present trial—a total of 7 days, of which Nil days were spent in hospital.(1)

(1. See RP 46(A) fn 2. Information should be found on MF B355 or AF B296 admitted in evidence under E2.)

Sentence Awarded by the Court:

To undergo Detention for Thirty (30) and to forfeit one ordinary day's pay for Fifty (50) days.

(Sgd) [signature] Judge-Advocate, if any. 10 Mar 45 Date awarded. (Sgd) [signature] President. (RP 45, 50.) Major

(See back of Convening Order as to assembly and disposal of record after trial.)

PART II. MINUTE WHERE CONFIRMATION RESERVED. (AA 54(5), RP 120(F), MML p 760.)

Date ..... (Sgd) ..... Commanding .....

PART III. DECISION OF CONFIRMING OFFR ON FINDING(S) AND SENTENCE.

(For duties and powers see AA 54, 57, RP 37(D) fn 6,46(A), 51-56, 120, MML pp 759-76; KR Can 567-577. Acquittals require no confirmation and cannot be revised: AA 54(3). Sending back finding or sentence for revision by Court: AA 54(2), RP 120(G). If not confirmed, accused may be tried again: AA 157, MML p 64. Minute of confirmation or non-confirmation may be altered before promulgation: RP 53, MML p 65. Quashing after promulgation: KR Can 573. Duties and powers of reviewing offrs: AA 57, 57A, RP 53A, 54. The Confirming Offr must sign here personally. AA 172 fn 1.)

My decision on the finding(s) and sentence set forth in Part I is:

Confirmed

I direct that the accused be not committed to prison or detention barracks until further orders.(1) (1. AA 57A. Delete if not used.)

(Sgd) [signature]

Date 13 Mar 45 Commanding 13 Cdn Inf Bde Confirming Officer.

PART IV. PROMULGATED AND EXTRACTS TAKEN. (RP 53, KR Can 576, 577.)

Accused.	Date.	Signature of Offr.
B37906 Pte FARRINGTON, V.E.	14 Mar 45	[signature] Lieut

ENTERED CONFIRM 64
16 Mar 45

ALL DELETIONS AND ALTERATIONS WILL BE INITIALLED.

RECORDED AT CMHQ IN AB 180 5A-57

RECEIVED 28 MAR 1945 JAG BRANCH R.W.H.Q.

FIELD GENERAL COURT-MARTIAL

CFA96 (In lieu of AFA3) 40/P & S/1698 (6144) 4/38B

Convened by Colonel C B Ware Temp/Comd 13 CITR dated 8 Mar 45 DSO

ACCUSED.

(As to the trial of two or more charged jointly see RP 16, 71, 109. As to reasons for showing (a) permanent or confirmed rank, and (b) appmt, A/rank or A/appmt, if any, see AA 182, 183, fns, KR Can 308, 328, 330.)

Number.	(a) Prmnt R. (b) Appmt, A/R or A/Appmt.	Full Christian Names.	Surname.	Unit.
B37906	Pte	Vincent Ernest	FARRINGTON	CIC 2 CITR

PROCEEDINGS REVIEWED

[signature] Capt.

REVIEWING OFFICER, JAG BRANCH C.M.H.Q.

PROCEEDINGS OF TRIAL.

Held in the Fd in (country) England on (date(s)) 10 Mar 45

RECORD FORM A—OPENING PROCEEDINGS AND ARRAIGNMENT.

W A1. The President, Members, waiting Member, ~~if any~~, and Offrs under instr, ~~if any~~, assemble, and the Court is closed.

(PRINTED MATTER, NOT IN ITALICS FOR GUIDANCE, WILL BE DELETED, IF NOT USED OR APPLICABLE, AND INITIALLED BY PRES OR JA. The Schedule referred to throughout is on p 4. Citations do NOT include all relevant fmn ROs. For guidance on procedure when a variation in this form arises, see form for GCM in MML pp 741 to 759. A brief record of such variation will be made and given a number having reference to appropriate or preceding para number herein. See back of Convening Order, CF A95, for oaths and instrs on how to record addresses, evidence, etc, which instrs are hereafter called "Notes". As to general provisions for conducting the trial see AA 53, RP 56, 63-70, 73, 74, 94, 103, 119, 132.)

W A2. The President initials and lays before the Court the Convening Order and Charge Sheet(s) attached thereto.(1) The Court is satisfied that it is properly convened and constituted(2), accused is (are) amenable to military law, and each charge discloses an offence.(3)

(1. As to use of Summary of Evidence see RP 17 fn 6. 2. AA 49, 50, RP 105-107. 3. RP 11-13, 23, 24.)

W A3. The Court is opened. The accused is (are) brought before the Court. At 1000 hours trial commences.

W A4. The Prosecutor produces a Medical Certificate that accused is (are) fit to undergo trial by court-martial.(1) ~~The Prosecutor informs the Court that accused elected to be tried by court-martial instead of being dealt with summarily by the CO.~~(2)

(1. KR Can 557. 2. AA 46(B), RP 60 fn 1. For effect see KR Can 563(c). Delete, if not applicable.)

W A5. President to accused: ~~Do you object to~~ as interpreter? Ans .....

~~The Interpreter is sworn.~~(1) Do you object to K Sgt/Cpl/Pte [illegible] NC as shorthand writer? Ans No

The shorthand writer is sworn.(1)

(1. RP 72. Delete, if none employed.)

A6. The Convening Order and names of the President and Members of the Court are read to the accused.(1)

President to accused: Do you object to be tried by me as President or by any of the Members of the Court?

Ans No (2)

(1. RP 110. 2. If no objection, waiting member retires. RP 66(B). If objection, see procedure AA 51, RP 25, 71, 18, MML p 742.)

W A7. The President, Members, ~~if any~~, and Offrs under instr, ~~if any~~, are sworn.(1) The following are the ranks, names and units of the offrs comprising the Court, etc:

President	Major	E. M. Moeser EDKC	HQ CRA
Member	Capt	W.D.A. Daley	3 C I D R
Member	Lieut	C.J. Medhurst	1 C I D R
~~Judge-Advocate~~			
Prosecutor	Lieut	PE Asperin	2 C I D R
Defending Offr	Lieut	K.A. Johnson	3 C I D R

Questions by President: Is the Prosecutor a lawyer? Ans No Is the Defending Offr a lawyer? Ans No (2)

(1. RP 26, 27, 109, 111. List of offrs under instr will be returned separately with proceedings for information of Conv Offr.)
(2. If Pros a lawyer and Def Offr not, accused is entitled to an adjournment when RP 89 (B) and fn 2 were not followed. See DI p 2.)

A8. The accused ..... before arraignment make(s) (no) ~~(a)~~ plea

W ..... (1)

(1. If a special plea is made for separate trial on one or more charges (RP 62(E), 108), or as to the jurisdiction of the Court (RP 34, 35(A), 113), or in bar of trial (RP 36), or as to accused's mental fitness to stand trial (AA 130, RP 57), or by one of several accused charged jointly to be tried separately (RP 16, 71), such plea, the addresses made in support or against, the evidence, if any, and finding are recorded per Notes. For forms of record see references in fns to RaP cited. Insert in A8 rank and name of the accused making the plea.)

W A9. The accused is ~~are~~ arraigned ~~separately~~ on all charges in the charge sheet.(1) The accused does ~~(do)~~ not object to any charge.(2) There is no amendment to be made to the Charge Sheet.(3) The President records the pleas in Part I of the Schedule.

(1. RP 31, 112. See para 1 of Instrs p 2. When more than one Charge Sheet see RP 62; when several accused to be tried separately see RP 71(C), and use separate copies of CF A96 to record proceedings. 2. RP 32, RP 33. If otherwise, delete and make appropriate record per Notes.)

W A10. The Court (~~is closed and~~) considers the Instrs on Procedure after Arraignment at top of p 2. The proceedings are continued on Record Form 7

PRESIDENT OR JA WILL INITIAL ALL DELETIONS AND ALTERATIONS.

INSTRUCTIONS ON PROCEDURE AFTER ARRAIGNMENT.

1. *The accused may not plead or be found Guilty on more than one of two or more charges laid in the alternative.* (RP 37(A).) *As to withdrawal of alternative charges by Prosecutor see RP 35(C). No other charge can be withdrawn for any reason without authy from Convening Offr. If Convening Offr concurs, Court may accept plea of Guilty to lesser, etc, offence.* (RP 44(H).) *Accused may change a plea of Not Guilty to Guilty during trial.* (RP 38.) *As to refusing to plead or not pleading intelligibly see RP 35(A). As to plea when sentence may be death see RP 35(D).*

2. *The proceedings on each charge sheet* (RP 62) *after arraignment will be conducted as follows in the respective circumstances stated :*

I. If pleas to all charges are GUILTY, use Record Form B below.

II. If pleas to all charges are NOT GUILTY, use Record Form D on p 3.

III. If pleas to some charges are GUILTY and to other charges are NOT GUILTY and,

(a) Such mixed pleas occur when there are no alternative charges in the Charge Sheet, use Record Form C below. (RP 37(A).)

(b) Such mixed pleas occur in a set of two or more charges laid in the alternative, see RP 37 (A) and fn 2 as to discretion of Court, (i) to try the accused on all such alternative charges as if he had pleaded Not Guilty thereto, or, (ii) to record the pleas as the findings of Court. After deciding between (i) and (ii), Court will proceed under foregoing instrs as may be appropriate to result of its decision. See MML p 744 Insirs (2).

3. *As to responsibility of President to accused see RP 59, 60(C); powers and duties of JA see RP 103; duty of Prosecutor see RP 60(A) (B); duty and privileges of accused and Defending Offr see RP 60(C), 87(C), 91, 92; swearing and withdrawal of witnesses from Court see RP 81, 82; questioning of accused see RP 80, 87(C), 92(B), and of witnesses see RP 83-85; calling or re-calling of witnesses by Court, etc, see RP 75-79, 86, 116; use of Summary of Evidence at Trial see RP 17(E) fn 6; and responsibility of JA or Pres to record proceedings see RP 94, 96.*

RECORD FORM B—PROCEEDINGS ON PLEAS OF GUILTY TO ALL CHARGES.

B1. The President or JA, if any, complies with RP 35(B) by explaining to the accused the nature and meaning of the charge(s)[1], and that on his plea of Guilty there will be no regular trial but merely a consideration of the sentence to be awarded after he has been given an opportunity to make a statement in reference to the charge(s), call witnesses as to character and make an address in mitigation of punishment.[2]
(1. RP 35 fn 3. 2. MML p 54 para 47.)

B2. President to accused : The Court will now receive any statement you desire to make in reference to the charge(s).[1] If it appears from your statement that there are circumstances which indicate that you do not understand the effect of the plea of Guilty[2], or which show provocation or extenuation in respect of which in your interest the witnesses for the Prosecution should be examined[3], we shall advise you to change your plea to Not Guilty. In making a statement you will not be sworn or subject to cross-examination ; and anything you say will not be used in evidence against you after you change your plea. If, however, it appears to the Court that your statement affects only the amount of punishment to which you are liable, you will not be advised to change your plea and you will be given an opportunity later to prove your statement by sworn testimony, if you so desire.[4]

President to accused : Do you wish to make a statement ? Ans.....[5]
(1. RP 37(B). 2. RP 37(D) fn 6. 3. RP 35(B) fn 5 para 3, MML p 54 para 47. 4. See para E3 of Record Form E. 5. Statement, if any, recorded per Notes.)

B3. The Court considers the accused's statement.[1] The Court decides (not) to advise accused to change his (their) plea(s) of Guilty to Not Guilty on.....charge(s). The accused is (are) so informed, and he (they) change(s) his (their) plea(s) on.....charge(s). Part I of the Schedule is amended accordingly.
(1. Court may be closed to consider the statement. Delete whole or part not used.)

B4. On the charge(s) to which the plea(s) of Guilty is (are) not changed the President records finding(s) of Guilty in Part I of the Schedule.[1]
(1. RP 35(B). If any plea(s) is (are) changed, use Record Form C or D as appropriate.)

B5. The Summary of Evidence is marked Ex ....., initialled and read aloud by the President.[1]
(1. If there is no Summary, or if it is inadequate, comply with RP 37(B). If there is any evidence inconsistent with any plea standing as Guilty, Court will advise accused to change such plea and, if changed to Not Guilty, try such charge(s) by use of paras D1 to D8 inclusive of Record Form D on p 3. RP 37(D).)

B6. The accused having been found Guilty on one or more of the charges, the proceedings are concluded by using Record Form E on p 3.

RECORD FORM C—PROCEEDINGS ON MIXED PLEAS OF GUILTY AND NOT GUILTY.

C1. As to the charges on which accused pleaded NOT GUILTY the trial is continued by using paras D1 to D8 inclusive of Record Form D on p 3 before proceeding with C 2.[1]
(1. RP 37(A) (E).)

C2. The charges on which accused pleaded GUILTY are read to him (them) again, and the trial is continued by using paras B1 to B5 of Record Form B above.[1]
(1. Under B5 such parts only of the Summary of Evidence are read as relate to the charges dealt with under C2. If any plea is changed to Not Guilty, trial thereon proceeds by complying with paras D1 to D8 inclusive in Record Form D on p 3 and making an appropriate record thereof on a separate sheet.)

C3. The accused having been found Guilty on one or more of the charges, the proceedings are concluded by using Record Form E on p 3.

PRESIDENT OR JA WILL INITIAL ALL DELETIONS AND ALTERATIONS.

Pin here Loose Sheets of Record.

RECORD FORM D—PROCEEDINGS ON PLEAS OF NOT GUILTY TO ALL CHARGES.

D1. President to accused : Do you wish to apply for an adjournment on the ground that any of the rules relating to procedure before trial have not been complied with, and that you have been prejudiced thereby, or on the ground that you have not had sufficient opportunity to prepare your defence ? Ans.....[1]
(1. If "yes", see RP 39(A) for procedure. Statement or evidence, if any, is recorded per Notes.)

D2. The Prosecutor makes (an) (no) opening address.[1]
(1. RP 39(B), 60(A) (B), 90, 92(C) (D). Record address per Notes, subject to RP 95(C).)

D3. The evidence for the Prosecution is taken.[1]
(1. RP 39(C), 114, KR Can 555. Record evidence per Notes. As to Prosecutor giving evidence himself see RP 39(D) (E).)

D4. The Prosecution is closed.[1] The Defending Offr submits that the evidence for the Prosecution does not establish a prima facie case against the accused on the.....charge(s).[2] The Court is closed, and considers the submission.[3] The Court is re-opened, and the President announces that the submission is disallowed on the.....charge(s), and allowed on the.....charge(s), and that, accordingly, the trial will proceed on the former, but the accused is (are) found Not Guilty on the latter charge(s).[4]
(1. Delete remainder of this para, if submission not made. 2. Arguments on submission, answer and reply are recorded per Notes. 3. RP 40 fn 1. See MML p 72 paras 12-14 and p 81 para 42. 4. Delete part not used. If accused acquitted on all charges, use second alternative in para D8.)
NB : If trial proceeds, accused must be allowed great latitude in making his defence, and the Court should not stop his defence solely on ground of irrelevance. (RP 60(C), 114, 115.)

D5. President to accused : You will now proceed with your defence.[1] You may, if you wish, give evidence yourself on oath as to the facts or your character or both, in which case you will be subject to cross-examination.[2] You may, however, make a statement without being sworn, and you will not be subject to cross-examination.[3] But a statement which could have been made on oath will not carry with the Court the same weight as sworn testimony.[4] You may call witnesses in your defence and as to character, whether you give evidence or make a statement or do neither.

President to accused : Do you wish to give evidence yourself as a witness, make a statement, or do neither ? Ans..... Do you intend to call witnesses on your behalf ? Ans..... Are they witnesses as to character only ? Ans.....
(1. RP 115. 2. RP 40(A), see 80(D). 3. RP 40 fn 10. 4. RP 40 fns 2, 9.)

D6. Consequent on the answers recorded in para D5 the appropriate procedure for the defence is followed.[1]
(1. RP 114, 115, 116. For procedure see Notes on back of Convening Order, CF 495. Evidence for accused as to his character should, if in his interest, be given before the finding. See RP 46(A) fn 1, 86(C). Note the further opportunity in para E1 of Record Form E. Record per Notes addresses, statement, evidence and any summing up by the JA under RP 42, 103(e).)

D7. The Court is closed to consider the finding(s).[1] The finding(s) of the Court is (are) recorded in Part I of the Schedule.[2] The Court is re-opened.
(1. RP 43, 117(A). See Notes in Part I of Schedule. 2. RP 44(A).)

D8. The President announces the finding(s), if any, of Not Guilty, and states to the accused that the finding(s) of the Court on the.....charge(s), being subject to confirmation, will be promulgated later.[1]
Or, The President announces that the accused is found Not Guilty on all charges and is to be released forthwith, and that the proceedings are accordingly terminated. Part I of the Schedule is dated and signed.[2]
(1. AA 54(3) (6), RP 45, 120(A). 2. AA 54(3), RP 45, 117. This alternative announcement is not applicable when there are pleas of Guilty outstanding and dealt with under Record Form B or C.)

D9. The accused having been found Guilty on one or more of the charges, the proceedings are concluded by using Record Form E below.

RECORD FORM E—PROCEEDINGS ON CONVICTION BEFORE SENTENCE.

E1. President to accused : Do you wish to give evidence yourself or to call any witnesses as to your character ?[1] Ans.....
(1. If evidence has already been given by accused or his witnesses as to his character, delete this para. RP 37(C) fn 4, 46 fn 1. Accused and witnesses are sworn. Evidence recorded per Notes.)

E2. The Prosecutor produces Statement(s) as to Character and Particulars of Service[1], and certified true copy (copies) of Conduct Sheet(s)[2], purporting to refer to the accused, which he submits to the Defending Offr for examination, and then to the Court for admission in evidence. The Court is satisfied that these documents refer to the accused, because (i) they purport to be signed in the manner required by AA 163(1) (g) (h), and (ii) they purport to refer to (a) soldier(s) having the same number, rank, name and corps as the accused. Admitted in evidence and marked Ex ..... and Ex ..... respectively.[3]
(1. MFB 355 or AFB 296. 2. MFM 6. 3. RP 46, KR Can 558. If above documents not produced, see RP 46 fn 1 para 1.)

E3. President to accused : Do you wish to address the Court on the Statement(s) and Conduct Sheet(s), and in mitigation of punishment ?[1] Ans.....[2]
(1. RP 37(C), 46(D). 2. Address, if any, recorded per Notes. Court should permit accused or his witnesses to prove on oath anything here or previously stated which would affect the amount of punishment. RP 37(F) fn 7.)

E4. The President states that the Court is closed to consider the sentence, and that the sentence to be awarded by the Court, being subject to confirmation, will not be announced, but will be promulgated later, and the proceedings in open court are accordingly terminated.[1]
(1. AA 54(6), RP 120(A).)

E5. The Court considers the sentence.[1] The President records the sentence in Part I of the Schedule, which is dated and signed by him and the JA, if any.[2]
(1. When several accused tried separately see RP 71 (D). One sentence only, comprised of the punishment or punishments laid down in AA 41, 44 and its proviso, is to be awarded to cover all charges in all charge sheets on which accused found guilty. RP 48. As to sentences see AA 44, 138, 182, RP 46-50, 69, 118, 119(A), KR Can 308, 330, 563-566, Overseas RO 309, 227, MML p 60, 757-759. As to sentences assigned for civil offences by the law of England see AA 41(5), MML p 130. When accused already under sentence of imprisonment or detention see AA 44(1B), 68(1), KR Can 564. 2. RP 50. As to release from arrest Confirming Offr see KR Can 567. As to assembly and disposal of record after trial see instrs on back of Convening Order.)

PRESIDENT OR JA WILL INITIAL ALL DELETIONS AND ALTERATIONS

CHARGE SHEET

The accused, No. B-37906 Private Vincent Ernest FARRINGTON, C.I.C., on strength of 2 Canadian Infantry Training Regiment, a soldier of the Canadian Army Overseas, is charged with:-

Sec 15(1) ARMY ACT

WHEN ON ACTIVE SERVICE ABSENTING HIMSELF WITHOUT LEAVE

In that he

In the Field, at 0800 hours, 5 Feb 45, illegally absented himself without leave until he surrendered himself to the Canadian Provost Corps at Guildford at 0030 hours, 3 Mar 45.

(Total Absence: 25 days, 16 hours, 30 minutes)

Laurentide Camp.

6 Mar 45

.....
(J A Wilson) Col
Comd
2 C I T R

To be tried by Field General Court Martial.

.....
(C B Ware) Col
Temporary Comd
13 Cdn Inf Trg Bde

IN THE FIELD
8 Mar 45

FIELD GENERAL COURT-MARTIAL

(Whether the accused to be tried is under his comd or not, a FGCM may on application to him be convened by any offr of Can Army Overseas, or of any other force if authorized in law, in immediate comd of troops on active service, subject to RP 105(C) and restrictions imposed by appropriate authy. AA 49, 50, RP 104-107, 114. As to the duties and privileges of the Convening Offr in dealing with the application see MML Chap V paras 20 and 23. RP 87(B).

There should be a separate Convening Order for each person to be tried separately by the same Court. RP 71(C), 109. As to separate charge sheets see RP 62, and as to separate trial on charges in the same charge sheet see RP 108. As to two or more accused charged jointly see RP 16, 109.

As to reasons for showing (a) permanent or confirmed rank, and (b) apptmt, A/rank or A/apptmt, if any, see AA 182, 183, fns. KR Can 308, 328, 330.)

ACCUSED.

Number.	(a) Prmnt R.	(b) Appmt, A/R or A/Appmt.	Full Christian Names.	Surname.	Unit.
B-37906	Pte		Vincent Ernest	FARRINGTON	CIC 2 CITR

CONVENING ORDER.

1. Whereas complaint has been made to me, the undersigned, that the person(x) named above as the accused, being subject to military law, has ~~have~~ committed the offence(x) set forth in the Charge Sheet(x) attached and on (*date*) 6 Mar 45 endorsed by me, (~~or by an offr of my staff for me~~), "To be tried by Field General Court-Martial".

2. And whereas I am of opinion that it is not practicable that such offence(x) should be tried by an ordinary General Court-Martial; ~~(and that it is not practicable to delay the trial for reference to a superior qualified offr.)~~

(Delete part in brackets when not required for compliance with RP 105(C).)

3. I hereby convene a Field General Court-Martial to try the said person(x), and to consist of the Offrs appointed or detailed hereunder.

4. ~~I nominate as Judge Advocate (x) the Offr so named in the Court, (b) a Fd Offr as President, for the reasons I have attached hereto.~~

(AA 49, RP 106(B), 107(A). Delete the whole or part, if not applicable.)

5. ~~I also appoint as Judge Advocate at the Court mentioned hereunder.~~

(RP 106(E). Delete, if none appointed.)

PRESIDENT.

(Rank.)	(Must be named. RP 106.)	(Unit.)
MAJOR	E M MILLER, ED	HQ CRU

MEMBERS.

(Rank.)	(Named or detailed. RP 106.)	(Unit.)
Captain	to be detailed by Comd	3 CITR
Lieutenant	to be detailed by Comd	1 CITR

WAITING MEMBER.

(Rank.)	(Named or detailed, if any. RP 106.)	(Unit.)
Captain	to be detailed by Comd	3 CITR

~~JUDGE ADVOCATE~~ (C.B.W.)

(Rank.)	(Must be named, if any. RP 106.)	(Unit.)

On Active Service in the Fd

in England (Country.)

Date 6 Mar 45

C. B. Ware (Signed personally. RP 105 fn 2.)

~~Commanding~~ Temporary Comd 13 Cdn Inf Trg Bde (Rank.)

(C B Ware)

Convening Officer.

CONVENING OFFR WILL INITIAL ALL DELETIONS AND ALTERATIONS

4/38A CFAES (In lieu of AFA3) 40/2 & 5/1001 (4021)

(See overleaf for oaths and notes for use on trial.)

MED OFFRS CERTIFICATE 2 CITR/11

K.R.Can.Para 557

I certify that I have this morning examined No. R.37.906.... .FARRINGTON....M.E..... and in my opinion he is FIT ~~UNFIT~~ to undergo trial by Court-Martial.

Station: Laurentide Camp ...Redundant Capt....Capt. (RCAMC) attached to 2 CITR

Date: 10 MAR 45

CASE OF

E-1 B-37906 Private Vincent Ernest FARRINGTON CIC 2 CITR

THe accused, sworn, states:

I joined the Army in 40 and came overseas with 48th Highlanders. I went to Sicily with the 48th and through Sicily and into Italy. I was shelled at Compobasso and for some hours after I had had the shelling and couldn't hear for awhile. The next day we left camp. I got hit on 24 Oct 43. I came back to AFrica with the wound and there I caught yellow jaundice and malaria. I went to Algeirs and stayed there for a few months which never did my leg any good at all. I came to England and went to the 16 Cdn GEn Hosp where I had to have an operation on my leg again. I had malaria in the hospital and there had treatment for it. I went from there to Roman Way Convalescent Hospital where I stayed a few months. I came to 3 CIRU from there. My troubles started from there on. My father has been pretty sick. He is in Canada. Just before I went away I had a letter saying that they never expected him to live for long. I had some troubles over here and I tried to have that straightened out. I also have a young brother who is going overseas in a few weeks. He is on draft. He is not 20 years old. I have quite a bit of trouble back home. My mother is dead. My sisters and brothers back there are going to pieces. I don't know what is wrong. I want to get married here. I applied for permission but the lady has had one blood test and the paper has been lost. It will have to be done again.

Q. Will you bring out more clearly why you were A.W.L. at this time?
A. On account of this letter from home stating my dad would not live much longer. I went to see the lady I was going to marry and tried to straighten things out with her. I have things pretty well straightened out now except for my Dad and my marriage.

QUESTIONS BY THE COURT

Q. How did you live the time you were away?
A. I had some money put away Sir.

Q. WHAT about rations?
A. I ate down town in restaurants.

Q. How is your leg?
A. Not too good sir.

Q. What is your category?
A. I have been waiting for a reboard since Sep 44. I have been recommended L-4.

Q. What were you doing before you went absent?
A. Working in messing stores from 5 in the morning until six at night. I was working on my leg. I was lifting 100 lbs bags and on ration trucks. Have been on this job ever since 24 Nov 44.

IN THE OPINION OF THE COURT IT IS NOT NECESSARY TO COMPLY WITH RP 83 (B).

No. B.37906 Name FARRINGTON, V.E. | Sqn, Battery, or Company | Corps C.I.C. | Date of enlistment 1 JUL 40 | GC Badges | Service or Proficiency Pay | 3/17 MFM 6 (AFB 122) 40/P&S/136 (7010)

Date of last entry in Company Conduct Sheet: N/A | No. and date of last drunk: N/A | Period not reckoning towards freedom from extra fine: N/A | Sheet No. 1 | Signature OC Company, etc | Character

Place	Date of offence	Rank	Cases of drunkenness	OFFENCE	Names of Witnesses	Punishment awarded	Date of award or of order dispensing with trial	By whom awarded	Remarks
U.K.		Pte.		AA 15(1) AWL 2days 20 hrs 46mins		Total forf of 10 days pay	26 Sep44		
U.K.		Pte.		AA 15(1) AWL 20 days 14 hrs (Cost of apprehension £0-5-10		Awd 28dys FP Total forf of 49 days pay	9 Nov44		
U.K.		Pte.		AA 15(1)AWL 0800hrs 15Jan45 to 2355hrs 21Jan45 (6days 15hrs and 55 mins)		Total forf of 27 Days Pay	23 Jan45		
U.K.		Pte.		AA 15(1)AWL 25dys 16hrs 30mins.		Total forf of 76 Days Pay.	10 Mar45	F.G.C.M.	
U.K.		Pte.		Granted 6 days remission of sent.		30 days detn.	3 Apr45		

(PTO)

Place	Date of offence	Rank	Cases of drunkenness	OFFENCE	Names of Witnesses	Punishment awarded	Date of award or of order dispensing with trial	By whom awarded	Remarks
U.K.	23-5-45	Pte.		AA 15(1) AWL		20 Days F.P. Total forf of 26 Days Pay.	30May45		
U.K.	3-7-45	Pte.		AA 15(1) AWL Costs of app £1-2-6		Awd 10 Days FP Total forf of 26 Days Pay.	23Jul45		
Field	10-9-45	Pte		AWL 0830 hrs 10Sep45 to 2245hrs 250ct45 Certified true extracts from the original MFM 4 held in my possession J.F. Hodgins Capt (J.F. Hodgins) Capt Officer having custody of original document		60 Days Detn.	20Nov45	F.G.C.M.	
13 Nov 45 U.K.									

Plea in mitigation

B [redacted] 7906 Pte. Farrington V. E.

This soldier enlisted voluntarily on 29 Jun 40 when he was 23 yrs of age. His NFM6 shows that his conduct has been very good until the latter part of 1944. He has been absent without leave on four occasions, chiefly due to efforts which he wished to make in straightening out difficulties in which he found himself, with his fiancée.

His service in action was with the 48th Highlanders of Canada. He was in Sicily 4 days after the invasion and was with the 48th Highlanders from that time until being evacuated by shrapnel in the left leg on 24 Oct 43 - near Campobasso. During this time, he was a good soldier. Following a period of hospitalization, he was sent to 3 C I R U in Sep 1944 and to 2 C I R in 24 Nov 44.

Farrington has been trying to arrange for his marriage, as he is responsible for pregnant condition of his fiancée. For this reason he went A.W.L. in an attempt to arrange marriage as soon as possible.

His employment while at 2 C I R, considering his present category, was not conducive to a happy frame of mind.

K.A. Johnson Lt.

SUMMARY OF EVIDENCE

...ase of B-37906 Pte. Vincent Ernest FARRI...
By dir...trength of 2 Canadian Infantry Train...
of Evid...dier of the Canadian Army Overseas.

...the Commanding Officer, the Summary
...n on oath.

FIRST WITNESS FOR THE PROSECUTION

C-32443 A/CSM C.P. ... on strength of Holding Wing, 2 C.I.D.B., having bee... sworn, states as follows:

"I Am C-32443 A/CSM C.P. ... on strength of Holding Wing, 2 C.I.D.B. The ...ARD, and am A/CSM of Holding Wing, 2 C.I.D.B. ... sworn, states as follows: ognize, failed to report for duty ...d, whom I now recognize, failed to report for duty ...d, whom I now rec- his pass which expired at 0800 hrs, ...b 45. the expiration of his pass which expired at 0800 hrs, ...b 45."

The accused declines to cross-examine th... ...itness.

C.P. Howard
...
C-32443 A/CSM Howard, C.P.

SECOND WITNESS FOR THE PROSECUTION

Lieut. H.J. BOAKE, Regimental Headquarters, 2 CITR, having been duly sworn, states as follows:

"I am Lieut. H.J. BOAKE, Regt HQ 2 CITR, and I produce the following document pursuant to Overseas RO 5352 which has been read over and shown to the accused, and which is attached hereto as Exhibit "A":

Exhibit "A": Certificate in Accordance with P.O. 2797 of 10 Apr 42, certifying that B-37906 Pte FARRINGTON, E. surrendered himself at Guildford at 0030 hrs, 3 Mar 45.

Which above exhibt pertains to the accused herein."

The accused declines to cross-examine this witness.

H.J. Boake
...
(H.J. Boake) Lieut.

The accused was cautioned as follows:

"Do you wish to make any statement or to give any evidence on oath? You are not obliged to say anything or give evidence unless you wish to do so, but whatever you say or any evidence you give will be taken down in writing and may be given in evidence."

The accused declines to make a statement and reserves his defence.

I certify that the foregoing Summary of Evidence consisting of ONE page was taken down by me in the presence and hearing of the accused, and that Rules of Procedure 4 (C) (D) (E) and (F) have been complied with.

P. Saperia
...
(P. Saperia) Lieut.
Officer detailed to take the Summary of Evidence.

Laurentide Camp.

6 Mar 45

SUMMARY OF EVIDENCE

In the case of B-37906 Pte. Vincent Ernest FARRINGTON, C.I.C. on strength of 2 Canadian Infantry Training Regiment, a soldier of the Canadian Army Overseas.

By direction of the Commanding Officer, the Summary of Evidence is taken on oath.

FIRST WITNESS FOR THE PROSECUTION

C-32443 A/CSM G.P. HOWARD, on strength of Holding Wing 2 C.I.D.B., having been duly sworn, states as follows:

"I Am C-32443 A/CSM G.P. HOWARD, and am A/CSM of Holding Wing, 2 C.I.D.B. The accused, whom I now recognize, failed to report for duty at the expiration of his pass which expired at 0800 hrs, 5 Feb 45."

The accused declines to cross-examine this witness.

G.P. Howard CSM

C-32443 A/CSM Howard, G.P.

SECOND WITNESS FOR THE PROSECUTION

Lieut. H.J. BOAKE, Regimental Headquarters, 2 CITR, having been duly sworn, states as follows:

"I am Lieut. H.J. BOAKE, Regt HQ 2 CITR, and I produce the following document pursuant to Overseas RO 5352 which has been read over and shown to the accused, and which is attached hereto as Exhibit :

Exhibit "A": Certificate in Accordance with P.O. 2797 of 10 Apr 42, certifying that B-37906 Pte FARRINGTON, E. surrendered himself at Guildford at 0030 hrs, 3 Mar 45.

Which above exhibt pertains to the accused herein."

The accused declines to cross-examine this witness.

H. J. Boake

(H.J. Boake) Lieut.

The accused was cautioned as follows:

"Do you wish to make any statement or to give any evidence on oath? You are not obliged to say anything or give evidence unless you wish to do so, but whatever you say or any evidence you give will be taken down in writing and may be given in evidence."

The accused declines to make a statement and reserves his defence.

I certify that the foregoing Summary of Evidence consisting of ONE page was taken down by me in the presence and hearing of the accused, and that Rules of Procedure 4 (C) (D) (E) and (F) have been complied with.

Laurentide Camp.

6 Mar 45

P. Saperia

(P. Saperia) Lieut.
Officer detailed to take the Summary of Evidence.

Exhibit 'A'

SCHEDULE "F"

Certificate in Accordance with P.C. 2797 of 10 Apr.42.

I CERTIFY that No B.37906.....Rank Pte....Name. FARRINGTON..V..E....
surrenderred himself
Unit. No.2.C.I.T.R.....was ~~arrested at~~ Guildford Station (Place)

at 0030.....hours on 3 March..(date) and that at the time of his ~~arrest~~ surrender he was wearing (military uniform) ~~xxxxxxxxxxxxxxxxxx~~

Signature of Provost-Marshal, Assistant Provost-Marshal or other officer or the Commanding Officer of the portion of His Majesty's Forces or the Officer, warrant-officer, or non-commissioned officer in charge of the detachment of the Canadian Provost Corps, Cdn. Army, into whose custody the above named person was taken on ~~arrest~~ surrender.

MAR 3 1945
NO. 2 PROVOST CO.

T. J. Quirk

.....
(T. J. Quirk) Capt.
.....O.C. No2 Provost Company.....
Canadian Provost Corps.

2 CITR/13

LIST OF WITNESSES

In the case of B-37906 (No.) Pte (Rank) FARRINGTON, V.E. (Surname & Initials)

CIC, on strength of 2 Cdn. Infantry Training Regiment, a soldier of the Cdn. Army Overseas.

(For the Prosecution)

1. C-32443 A/CSM G.P. HOWARD, Holding Wing, 2 C.I.D.B.
2. Lieut. H.J. BOAKE, Regt HQ 2 CITR

(For the Defence)

N I L

LIST OF EXHIBITS

In the case of B-37906 (No.) Pte (Rank) FARRINGTON V.E. (Surname & Initials)

CIC, on strength of 2 Cdn. Infantry Training Regt., a soldier of the Cdn. Army Overseas.

(For the Prosecution)

Exhibit "A": - Certificate in Accordance with P.O. 2797 of 10 Apr 42, certifying that accused surrendered himself at Guildford at 0030 hrs, 3 Mar 45.

(For the Defence)

N I L

REQUEST FOR PRESIDING OFFICER

I, B-37906 Pte Vincent Ernest FARRINGTON

hereby request that the Convening Officer appoint any available officer to represent me at my forthcoming trial by Court-Martial, should he be available.

Laurentide Camp,
6 Mar 45

V.E. Farrington
B-37906 Pte Farrington, V.E.

RECEIPT FOR DOCUMENTS.

I, B-37906 Pte Vincent Ernest FARRINGTON

hereby acknowledge that I have received a true copy of the Summary of Evidence taken in England preliminary to my Court-Martial, and I further acknowledge receipt of a true copy of the Charge Sheet under which I am being brought to Court-Martial.

Laurentide Camp.
6 Mar 45

V.E. Farrington
B-37906 Pte Farrington, V.E.

M.F.B. 355
22M—5-41 (572-3)
H.Q. 1772-39-420
A.F.B. 296

STATEMENT AS TO CHARACTER AND PARTICULARS OF SERVICE OF ACCUSED

Number	Rank	Name	Regiment ~~(or unit)~~
B-37906	Pte	Vincent Ernest FARRINGTON	2 C I T

1. The following is a fair and true summary of the entries in the ~~Service and General Regimental and Squadron, Battery's~~ ~~Conduct sheets~~ or Company Conduct sheets of the accused, exclusive of convictions by a Court-Martial or a Civil Court, ~~Air Force Act~~ of summary awards under Section 47 of the Army Act and of cases in which trial has been dispensed with.

	Within last 12 months		Since enlistment ~~or appointment~~	
For	A.A. Sec 15(1) 3	times	A.A. Sec 15(1) 3	times
~~For~~		~~times~~		~~times~~
~~For~~		~~times~~		~~times~~
~~For~~		~~times~~		~~times~~

~~Number of instances of gallantry or distinguished conduct~~

~~or~~

There are no entries in the conduct sheets of the accused.

NOTE.—If the charge is for drunkenness, the entries for drunkenness must be stated separately.

2. The accused has not been previously convicted

~~or~~

~~Previous convictions of the accused by a court-martial or a civil court, of summary awards under Air Force Act Section 47 of the Army Act and dispensations with trial under A.A. 73 A.F.A. 73 are set out in the Schedule annexed to this statement.~~

3. The accused is not under sentence at the present time.

~~or~~

~~The accused at the present time is under sentence for ..... beginning on the ..... day of .....~~

4. The accused has been in confinement awaiting trial on the present charges, for 0 days in ~~Air Force~~ civil custody, and 7 days in military custody, making a total of 7 days in custody, of which 0 days were spent in hospital.

5. The present age of the accused according to his ~~record of service in~~ attestation paper is 27 years, 3 months.

6. The date of his ~~condemnation~~ attestation specified in his ~~record of service~~ attestation paper is 1 Jul 40.

~~7. The service which the accused is allowed to reckon towards discharge is .....~~

~~8. The accused is entitled to reckon ..... service for the purpose of determining his pension, etc.~~

9. The accused is in possession of or entitled to no ~~air force~~ military decoration, or ~~air force~~ military reward (or is in possession of or entitled to). State any ~~air force~~ military decoration or reward. C.V.S.M. & CLASP.

~~10. (If the accused is a warrant officer.) The accused before he was made a warrant officer last held ~~Air Force~~ the regimental rank of .....~~

11. (In the case of an officer.) The accused holds in the Royal Canadian Air Force the rank of ~~Permanent Force~~ unit dated, and in his regiment (or corps), the rank of dated.

12. The accused has served as a non-commissioned officer continuously, without reduction, to the present date:—

Date of promotion.

In the rank of years.

In the rank of years.

In the rank of years.

NOTE.—If any matter in any of the above paragraphs cannot be stated from the Regimental books, the paragraph must be struck through.

SCHEDULE

Of convictions by a court-martial or civil court, of summary awards under Section 47 of the ~~Army~~ Air Force Act, and of cases in which trial has been dispensed with of accused, Number Rank Name of ~~Regiment~~ Unit

NOTE.—A verbatim extract from the regimental books stating these convictions and dispensations with trial must be inserted.

Description of Court by which tried	Date and Place of Trial	Charge upon which convicted	Sentence of the Court	Punishment Remitted

I hereby certify that the foregoing schedule of convictions and dispensations with trial is a true extract from the regimental books in my custody.

Signed this 10th day of Mar 45 Baptiste Lt Asst Adj. 2 C.T.R

The above statement (with the schedule of convictions and of cases in which trial has been dispensed with) is read, marked A & B signed by the president, and annexed to the proceedings.

No. [redacted] Name [redacted]

Date of last entry in Company Conduct Sheet: N/A | No. and date of last drunk: N/A | Sqn, Battery, or Company: [redacted] | Corps: C I C | Period not reckoning towards freedom from extra fine: N/A | Date of enlistment: 29 Jun 40 | GC Badges: 1 | Sheet No: 2 | Signature OC Company, etc: [redacted] | Service or Proficiency Pay: N/A | 3/17 MFM 6 (AFB 122) 40/P&S/136 (5413)

Character: [redacted]

Place	Date of offence	Rank	Cases of drunkenness	OFFENCE	Names of Witnesses	Punishment awarded	Date of award or of order dispensing with trial	By whom awarded	Remarks
				SHEET No. 1 DESTROYED 29 Jun 42					
Field	21 Sep 44	Pte		WOAS AWL from 2359 hrs, 21 Sep 44 until surrendering to Unit Guard Room at 2045 hrs, 24 Sep 44. Total absence 2 days, 20 hrs, 46 mins. A.A. 15(1)		Documentary Forf 7 days pay FR&I149(2)	26 Sep 44		Forfs 7 dys pay FR&I149 (2) Auto forf 3 dys pay FR&I149 (1)(a).
Field	16 Oct 44	Pte		WOAS AWL from 2200 hrs, 16 Oct 44 until apprehended by CPC at Cholchester at about 1300 hrs, 6 Nov 44. Total absence 20 days, 15 hrs. A.A. Sec 15(1).		Documentary 28 days FP 28 days pa FR&I149(2)	0 Nov 44		Forfs 28 days pa FR&I149(2).21 dy pay FR&I149(1)(a Total forf 49 days pay. Plac under stoppage, cost of app. in amt of £0/5/10.

(PTO)

Place	Date of offence	Rank	Cases of drunkenness	OFFENCE	Names of Witnesses	Punishment awarded	Date of award or of order dispensing with trial	By whom awarded	Remarks
Field	15 Jan 45	Pte		AA Sec 15(1) WOAS, AWL from 0800 hrs 15 Jan 45 to 2355 hrs 21 Jan 45. Absent 6 days, 15 hrs, 55 mins	Cpl Whyte Cpl Abel	Forf 20 dys pay FR&I 149 (2).	23 Jan 45.	Lt-Col C.M. MacMillan	Forf 7 days pay. FR&I 149(1)(a)

CERTIFIED TRUE COPY .....Saperia.....
6 Mar 45. (P. Saperia) Lieut.
Officer having custody of original.

SCHEDULE.

PART I. PLEA(S), FINDING(S) AND SENTENCE.

Accused : B.37906 Pte Vincent Ernest FARRINGTON

Charge. (Insert "alternative" where applicable.)	Plea. (See Instrs p 2.)	Finding. (See note below.)	(Space for use as required for further charges, accused charged jointly, special findings, etc.)
1st AA 15(1)	GUILTY	GUILTY	
2nd			
3rd			
4th			
5th			
6th			

(Note : As to findings for lesser offences see AA 56, RP 44 ; findings on alternative charges see MML p 483 fn 4 para 2, RP 44 ; special findings see RP 44 and MML p 753, and in loss of kit see RP 44 fn 6.)

~~At present under sentence for~~ ..... beginning on ~~(date)~~ .....(1)

(1. Insert sentence being served, or delete, if not applicable. See RP 46(A). Information should be found on MF B355 or AF B296.)

Time in confinement awaiting present trial—a total of 9 days, of which 7th days were spent in hospital.(1)

(1. See RP 46(A) fn 2. Information should be found on MF B355 or AF B296 admitted in evidence under E2.)

Sentence Awarded by the Court :

To forfeit all ordinary pay for a period of ninety (90) days.

(Sgd) ..... Judge-Advocate, if any. 31 MAY 46 Date awarded. (Sgd) ..... President. (RP 45, 50.)

(See back of Convening Order as to assembly and disposal of record after trial.)

PART II. MINUTE WHERE CONFIRMATION RESERVED. (AA 54(5), RP 120(F), MML p 760.)

Date ..... (Sgd) ..... Commanding .....

PART III. DECISION OF CONFIRMING OFFR ON FINDING(S) AND SENTENCE.

(For duties and powers see AA 54, 57, RP 37(D) fn 6, 46(A), 51-56, 120, MML pp 759-761, KR Can 567-577. Acquittals require no confirmation and cannot be revised : AA 54(2), RP 120(G). If not confirmed, accused may be tried again : AA 157, MML p 64. Minute of confirmation or non-confirmation may be altered before promulgation : RP 53, MML p 65. Quashing after promulgation : KR Can 573. Duties and powers of reviewing offrs : AA 57, 57A, RP 53A, 54. The Confirming Offr must sign here personally. AA 172 fn 1.)

My decision on the finding(s) and sentence set forth in Part I is :

Finding and sentence Confirmed.

~~I direct that the accused be not committed to prison or detention barracks until further order.~~(1) (1. AA 57A. Delete if not used.)

(Sgd) J.T. Rutherford Brig

Date 11 June 46. Commanding C.R.U. Confirming Officer.

PART IV. PROMULGATED AND EXTRACTS TAKEN. (RP 53, KR Can 576, 577.)

Accused. B 37906 Pte FARRINGTON V.E. Date. 17 June 46 Signature of Offr.

Promulgated in 1 Cdn Repat Depot Part II DO No 119 "A" d/14 June 46.

(B M MacINTYRE) Lt-Col., Offr Comd "1" Wing, 1 Cdn Repat Depot

ALL DELETIONS AND ALTERATIONS WILL BE INITIALLED.

RECEIVED JUN 1946 JAG BRANCH G.H.Q.

RECORDED AT CMHQ IN AB 160 - 6A-(P)

CPA86 (In lieu of AFA3) 40/P & S/1698 (6144) 4/38B

FIELD GENERAL COURT-MARTIAL

Convened by Order of Brig. T.J. Rutherford CBE ED Comd CRU dated 30 May 46

ACCUSED.

(As to the trial of two or more charged jointly see RP 16, 71, 109. As to reasons for showing (a) permanent or confirmed rank, and (b) appmt, A/rank or A/appmt, if any, see AA 182, 183, frs, KR Can 308, 328, 330.)

Number.	(a) Prmnt R. (b) Appmt, A/R or A/Appmt.	Full Christian Names.	Surname.	Unit.
B.37906	Pte	Vincent Ernest	FARRINGTON	1 Cdn Repat Depot

PROCEEDINGS REVIEWED

25 Jun 46 C.H. Tait, Maj.

REVIEWING OFFICER, JAG BRANCH G.H.Q.

PROCEEDINGS OF TRIAL.

Held in the Fd in (*country*) ENGLAND on (*date(s)*) 31 May 46

RECORD FORM A—OPENING PROCEEDINGS AND ARRAIGNMENT.

A1. The President, Members, ~~waiting Member, JA, if any, and Offrs under instr, if any,~~ assemble, and the Court is closed.

(PRINTED MATTER, NOT IN ITALICS FOR GUIDANCE, WILL BE DELETED, IF NOT USED OR APPLICABLE, AND INITIALLED BY PRES OR JA. The Schedule referred to throughout is on p 4. Citations do NOT include all relevant fmn ROs. For guidance on procedure when a variation in this form arises, see form for GCM in MML pp 741 to 759. A brief record of such variation will be made and given a number having reference to appropriate or preceding para number herein. See back of Convening Order, CF A95, for oaths and instrs on how to record addresses, evidence, etc, which instrs are hereafter called "Notes". As to general provisions for conducting the trial see AA 53, RP 56, 63-70, 73, 74, 94, 103, 119, 132.)

A2. The President initials and lays before the Court the Convening Order and Charge Sheet(s) attached thereto.(1) The Court is satisfied that it is properly convened and constituted(2), accused is ~~(are)~~ amenable to military law, and each charge discloses an offence.(3)

(1. As to use of Summary of Evidence see RP 17 fn 6. 2. AA 49, 50, RP 105-107. 3. RP 11-13, 23, 24.)

A3. The Court is opened. The accused is ~~(are)~~ brought before the Court. At 1120 hours trial commences.

A4. The Prosecutor produces a Medical Certificate that accused is ~~(are)~~ fit to undergo trial by court-martial.(1) ~~The Prosecutor informs the Court that accused elected to be tried by court-martial instead of being dealt with summarily by the CO.(2)~~

(1. KR Can 557. 2. AA 46(8), RP 60 fn 1. For effect see KR Can 563(c). Delete, if not applicable.)

A5. President to accused : Do you object to ..... as interpreter ? Ans .....

The Interpreter is sworn.(1) Do you object to M.69156 Sgt Rimstad,RA as shorthand writer ? Ans NO-SIR

The shorthand writer is sworn.(1)

(1. RP 72. Delete, if none employed.)

A6. The Convening Order and names of the President and Members of the Court are read to the accused.(1)

President to accused : Do you object to be tried by me as President or by any of the Members of the Court ?

Ans NO SIR.(2)

(1. RP 110. 2. If no objection, waiting member retires. RP 68(B). If objection, see procedure AA 51, RP 25, 71, 18, MML p 742.)

A7. The President, Members, ~~JA, if any, and Offrs under instr, if any,~~ are sworn.(1) The following are the ranks, names and units of the offrs comprising the Court, etc :

President	Lt-Col	C.R. WOODROW OBE ED	H. CRU
Member	Capt	G.W. RAHM	1 Cdn Rep Dep
Member	Lieut	M.J. KIDDY	1 Cdn Rep Dep
~~Judge-Advocate~~			
Prosecutor	Lieut	J.A. TRAPLIN	1 Cdn Rep Dep
Defending Offr	Lieut	R.I.P. CAMPBELL	1 Cdn Rep Dep

Questions by President : Is the Prosecutor a lawyer ? Ans YES Is the Defending Offr a lawyer ? Ans YES (2)

(1. RP 26, 27, 109, 111. List of offrs under instr will be returned separately with proceedings for information of Conv Offr.)
(2. If Pros a lawyer and Def Offr not, accused is entitled to an adjournment when RP 89 (B) and fn 2 were not followed. See DI p 2.)

A8. The accused ..... before arraignment make(s) (no) (a) plea ..... (1)

(1. If a special plea is made for separate trial on one or more charges (RP 62(E), 108), or as to the jurisdiction of the Court (RP 34, 35(A), 113), or in bar of trial (RP 36), or as to accused's mental fitness to stand trial (AA 130, RP 57), or by one of several accused charged jointly to be tried separately (RP 16, 71), such plea, the addresses made in support or against, the evidence, if any, and finding are recorded per Notes. For forms of record see references in fns to RoP cited. Insert in AB rank and name of the accused making the plea.)

A9. The accused is ~~(are)~~ arraigned (separately) on all charges in the charge sheet.(1) The accused does ~~(do)~~ not object to any charge.(2) There is no amendment to be made to the Charge Sheet.(3) The President records the pleas in Part I of the Schedule.

(1. RP 31, 112. See para 1 of Instrs p 2. When more than one Charge Sheet see RP 62 ; when several accused to be tried separately see RP 71(C), and use separate copies of CF A96 to record proceedings. 2. RP 32, RP 33. If otherwise, delete and make appropriate record per Notes.)

A10. The Court ~~(is closed and)~~ considers the Instrs on Procedure after Arraignment at top of p 2. The proceedings are continued on Record Form B

PRESIDENT OR JA WILL INITIAL ALL DELETIONS AND ALTERATIONS.

INSTRUCTIONS ON PROCEDURE AFTER ARRAIGNMENT.

1. *The accused may not plead or be found Guilty on more than one of two or more charges laid in the alternative.* (*RP* 37(*A*).) *As to withdrawal of alternative charges by Prosecutor see RP* 35(*C*). *No other charge can be withdrawn for any reason without authy from Convening Offr. If Convening Offr concurs, Court may accept plea of Guilty to lesser, etc, offence.* (*RP* 44(*H*).) *Accused may change a plea of Not Guilty to Guilty during trial.* (*RP* 38.) *As to refusing to plead or not pleading intelligibly see RP* 35(*A*). *As to plea when sentence may be death see RP* 35(*D*).

2. *The proceedings on each charge sheet* (*RP* 62) *after arraignment will be conducted as follows in the respective circumstances stated:*

I. If pleas to all charges are GUILTY, use Record Form B below.

II. If pleas to all charges are NOT GUILTY, use Record Form D on p 3.

III. If pleas to some charges are GUILTY and to other charges are NOT GUILTY and,

(a) *Such mixed pleas occur when there are no alternative charges in the Charge Sheet, use Record Form C below.* (*RP* 37(*A*).)

(b) *Such mixed pleas occur in a set of two or more charges laid in the alternative, see RP* 37 (*A*) *and fn* 2 *as to discretion of Court,* (*i*) *to try the accused on all such alternative charges as if he had pleaded Not Guilty thereto, or,* (*ii*) *to record the pleas as the findings of Court. After deciding between* (*i*) *and* (*ii*), *Court will proceed under foregoing instrs as may be appropriate to result of its decision. See MML p* 744 *Instrs* (2).

3. *As to responsibility of President to accused see RP* 59, 60(*C*); *powers and duties of JA see RP* 103; *duty of Prosecutor see RP* 60(*A*) (*B*); *duty and privileges of accused and Defending Offr see RP* 60(*C*), 87(*C*), 91, 92; *swearing and withdrawal of witnesses from Court see RP* 81, 82; *questioning of accused see RP* 80, 87(*C*), 92(*B*), *and of witnesses see RP* 83-85; *calling or re-calling of witnesses by Court, etc, see RP* 75-79, 86, 116; *use of Summary of Evidence at Trial see RP* 17(*E*) *fn* 6; *and responsibility of JA or Pres to record proceedings see RP* 94, 96.

RECORD FORM B—PROCEEDINGS ON PLEAS OF GUILTY TO ALL CHARGES.

B1. The President ~~or JA, if any,~~ complies with RP 35(B) by explaining to the accusod the nature and meaning of the charge(s)(1), and that on his plea of Guilty there will be no regular trial but merely a consideration of the sentence to be awarded after he has been given an opportunity to make a statement in reference to the charge(s), call witnesses as to character and make an address in mitigation of punishment.(2)
(*1. RP 35 fn 3. 2. MML p 54 para 47.*)

B2. President to accused: The Court will now receive any statement you desire to make in reference to the charge(s).(1) If it appears from your statement that there are circumstances which indicate that you do not understand the effect of the plea of Guilty(2), or which show provocation or extenuation in respect of which in your interest the witnesses for the Prosecution should be examined(3), we shall advise you to change your plea to Not Guilty. In making a statement you will not be sworn or subject to cross-examination; and anything you say will not be used in evidence against you after you change your plea. If, however, it appears to the Court that your statement affects only the amount of punishment to which you are liable, you will not be advised to change your plea and you will be given an opportunity later to prove your statement by sworn testimony, if you so desire.(4)

President to accused: Do you wish to make a statement? Ans. NO SIR.(5)
(*1. RP 37(B). 2. RP 37(D) fn 6. 3. RP 35(B) fn 5 para 3, MML p 54 para 47. 4. See para E3 of Record Form E. 5. Statement, if any, recorded per Notes.*)

B3. ~~The Court considers the accused's statement.(1) The Court decides (not) to advise accused to change his (their) plea(s) of Guilty to Not Guilty on.....charge(s). The accused is (are) so informed, and he (they) change(s) his (their) plea(s) on.....charge(s). Part I of the Schedule is amended accordingly.~~
(*1. Court may be closed to consider the statement. Delete whole or part not used.*)

B4. On the charge(s) to which the plea(s) of Guilty is (are) not changed the President records finding(s) of Guilty in Part I of the Schedule.(1)
(*1. RP 35(B). If any plea(s) is (are) changed, use Record Form C or D as appropriate.*)

B5. The Summary of Evidence is marked Ex. A, initialled and read aloud by the President.(1)
(*1. If there is no Summary, or if it is inadequate, comply with RP 37(B). If there is any evidence inconsistent with any plea standing as Guilty, Court will advise accused to change such plea and, if changed to Not Guilty, try such charge(s) by use of paras D1 to D8 inclusive of Record Form D on p 3. RP 37(D).*)

B6. The accused having been found Guilty on one or more of the charges, the proceedings are concluded by using Record Form E on p 3.

RECORD FORM C—PROCEEDINGS ON MIXED PLEAS OF GUILTY AND NOT GUILTY.

C1. As to the charges on which accused pleaded NOT GUILTY the trial is continued by using paras D1 to D8 inclusive of Record Form D on p 3 before proceeding with C 2.(1)
(*1. RP 37(A) (E).*)

C2. The charges on which accused pleaded GUILTY are read to him (them) again, and the trial is continued by using paras B1 to B5 of Record Form B above.(1)
(*1. Under B5 such parts only of the Summary of Evidence are read as relate to the charges dealt with under C2. If any plea is changed to Not Guilty, trial thereon proceeds by complying with paras D1 to D8 inclusive in Record Form D on p 3 and making an appropriate record thereof on a separate sheet.*)

C3. The accused having been found Guilty on one or more of the charges, the proceedings are concluded by using Record Form E on p 3.

PRESIDENT OR JA WILL INITIAL ALL DELETIONS AND ALTERATIONS.

Fin here Loose Sheets of Record.

RECORD FORM D—PROCEEDINGS ON PLEAS OF NOT GUILTY TO ALL CHARGES.

D1. President to accused: Do you wish to apply for an adjournment on the ground that any of the rules relating to procedure before trial have not been complied with, and that you have been prejudiced thereby, or on the ground that you have not had sufficient opportunity to prepare your defence? Ans.....(1)
(*1. If "yes", see RP 39(A) for procedure. Statement or evidence, if any, is recorded per Notes.*)

D2. The Prosecutor makes (an) (no) opening address.(1)
(*1. RP 39(B), 60(A) (B), 90, 92(C) (D). Record address per Notes, subject to RP 95(C).*)

D3. The evidence for the Prosecution is taken.(1)
(*1. RP 39(C), 114, KR Can 555. Record evidence per Notes. As to Prosecutor giving evidence himself see RP 39(D) (E).*)

D4. The Prosecution is closed.(1) The Defending Offr submits that the evidence for the Prosecution does not establish a prima facie case against the accused on the.....charge(s).(2) The Court is closed, and considers the submission.(3) The Court is re-opened, and the President announces that the submission is disallowed on the.....charge(s), and allowed on the.....charge(s), and that, accordingly, the trial will proceed on the former, but the accused is (are) found Not Guilty on the latter charge(s).(4)
(*1. Delete remainder of this para, if submission not made. 2. Arguments on submission, answer and reply are recorded per Notes. 3. RP 40 fn 1. See MML p 72 paras 12-14 and p 81 para 42. 4. Delete part not used. If accused acquitted on all charges, use secund alternative in para D8.*)
NB: If trial proceeds, accused must be allowed great latitude in making his defence, and the Court should not stop his defence solely on ground of irrelevance. (*RP 60(C), 114, 115.*)

D5. President to accused: You will now proceed with your defence.(1) You may, if you wish, give evidence yourself on oath as to the facts or your character or both, in which case you will be subject to cross-examination.(2) You may, however, make a statement without being sworn, and you will not be subject to cross-examination.(3) But a statement which could have been made on oath will not carry with the Court the same weight as sworn testimony.(4) You may call witnesses in your defence and as to character, whether you give evidence or make a statement or do neither.

President to accused: Do you wish to give evidence yourself as a witness, make a statement, or do neither? Ans..... Do you intend to call witnesses on your behalf? Ans..... Are they witnesses as to character only? Ans.....
(*1. RP 115. 2. RP 40(A), see 80(D). 3. RP 40 fn 10. 4. RP 40 fns 2, 9.*)

D6. Consequent on the answers recorded in para D5 the appropriate procedure for the defence is followed.(1)
(*1. RP 114, 115, 116. For procedure see Notes on back of Convening Order, CF A95. Evidence for accused as to his character should, if in his interest, be given before the finding. See RP 46(A) fn 1, 86(C). Note the further opportunity in para E1 of Record Form E. Record per Notes addresses, statement, evidence and any summing up by the JA under RP 42, 103(e).*)

D7. The Court is closed to consider the finding(s).(1) The finding(s) of the Court is (are) recorded in Part I of the Schedule.(2) The Court is re-opened.
(*1. RP 43, 117(A). See Notes in Part I of Schedule. 2. RP 44(A).*)

D8. The President announces the finding(s), if any, of Not Guilty, and states to the accused that the finding(s) of the Court on the.....charge(s), being subject to confirmation, will be promulgated later.(1)
Or, The President announces that the accused is found Not Guilty on all charges and is to be released forthwith, and that the proceedings are accordingly terminated. Part I of the Schedule is dated and signed.(2)
(*1. AA 54(3) (6), RP 45, 120(A). 2. AA 54(3), RP 45, 117. This alternative announcement is not applicable when there are pleas of Guilty outstanding and dealt with under Record Form B or C.*)

D9. The accused having been found Guilty on one or more of the charges, the proceedings are concluded by using Record Form E below.

RECORD FORM E—PROCEEDINGS ON CONVICTION BEFORE SENTENCE.

E1. President to accused: Do you wish to give evidence yourself or to call any witnesses as to your character?(1)
Ans. NO SIR.
(*1. If evidence has already been given by accused or his witnesses as to his character, delete this para. RP 37(C) fn 4, 46 fn 1. Accused and witnesses are sworn. Evidence recorded per Notes.*)

E2. The Prosecutor produces Statement(s) as to Character and Particulars of Service(1), and certified true copy (copies) of Conduct Sheet(s)(2), purporting to refer to the accused, which he submits to the Defending Offr for examination, and then to the Court for admission in evidence. The Court is satisfied that these documents refer to the accused, because (i) they purport to be signed in the manner required by AA 163(l) (g) (h), and (ii) they purport to refer to (a) soldier(s) having the same number, rank, name and corps as the accused. Admitted in evidence and marked Ex. B and Ex. C respectively.(3)
(*1. MFB 355 or AFB 296. 2. MFM 6. 3. RP 46, KR Can 558. If above documents not produced, see RP 46 fn 1 para 1.*)

E3. President to accused: Do you wish to address the Court on the Statement(s) and Conduct Sheet(s), and in mitigation of punishment?(1) Ans. Defending Officer's plea in mitigation attached.(2)
(*1. RP 37(C), 46(D). 2. Address, if any, recorded per Notes. Court should permit accused or his witnesses to prove on oath anything here or previously stated which would affect the amount of punishment. RP 37(F) fn 7.*)

E4. The President states that the Court is closed to consider the sentence, and that the sentence to be awarded by the Court, being subject to confirmation, will not be announced, but will be promulgated later, and the proceedings in open court are accordingly terminated.(1)
(*1. AA 54(6), RP 120(A).*)

E5. The Court considers the sentence.(1) The President records the sentence in Part I of the Schedule, which is dated and signed by him ~~and the JA, if any.~~(2)
(*1. When several accused tried separately see RP 71 (D). One sentence only, comprised of the punishment or punishments laid down in AA 41, 44 and its proviso, is to be awarded to cover all charges in all charge sheets on which accused found guilty. RP 48. As to sentences see AA 44, 138, 182, RP 46-50, 69, 118, 119(A), KR Can 308, 330, 563-566, Overseas RO 309, 2323, MML p 60, 757-759. As to sentences assigned for civil offences by the law of England see AA 41(5), MML p 130. When accused already under sentence of imprisonment or detention see AA 44(1B), 68(1), KR Can 564. 2. RP 50. As to release from arrest by Confirming Offr see KR Can 567. As to assembly and disposal of record after trial see instrs on back of Convening Order.*)

PRESIDENT OR JA WILL INITIAL ALL DELETIONS AND ALTERATIONS.

CHARGE SHEET

The accused, B 37906 Private Vincent Ernest Farrington, "1" Wing, 1 Canadian Repatriation Depot, a soldier of the Canadian Army Overseas, is charged with:

FIRST CHARGE

AA Sec 15 (1)

WHILST ON ACTIVE SERVICE ABSENTING HIMSELF WITHOUT LEAVE,

in that he,

in the field, in England, did absent himself without leave from 1415 hrs, 1 Apr 46 until 1830 hrs, 21 May 46.

Total time absent: 50 days, 4 hrs, 15 mins.

AA Sec 15 (1)

(B.M. MacIntyre) Lt-Col.,
Officer Commanding "1" Wing,
1 Cdn Repat Depot.

Tweedsmuir Camp,
Thursley, Sy.
May 28th, 1946.

TO BE TRIED BY FIELD GENERAL COURT MARTIAL.

In the Field
30 May 46

(T.J. Rutherford) Brig.,
Comd
Canadian Repatriation Units

FIELD GENERAL COURT-MARTIAL

CFA95 (In lieu of AFA8)
40/P&S/1697 (2868)

(Whether the accused to be tried is under his comd or not, a FGCM may on application to him be convened by any offr of Cdn Army Overseas, or of any other force if authorized in law, in immediate comd of troops on active service, subject to RP 105(C) and restrictions imposed by appropriate authy. AA 49, 50, RP 104-107, 114. As to the duties and privileges of the Convening Offr in dealing with the application see MML Chap V paras 20 and 23, RP 87(B).

There should be a separate Convening Order for each person to be tried separately by the same Court. RP 71(C), 109. As to separate charge sheets see RP 62, and as to separate trial on charges in the same charge sheet see RP 108. As to two or more accused charged jointly see RP 16, 109.

As to reasons for showing (a) permanent or confirmed rank, and (b) apptmt, A/rank or A/apptmt, if any, see AA 182, 183, fns, KR Can 308, 328, 330.)

ACCUSED.

Number.	(a) Prmnt R.	(b) Apptmt, A/R or A/Apptmt.	Full Christian Names.	Surname.	Unit.
B.37906	Pte		Vincent Ernest	FARRINGTON	1 Cdn Repat Dep

CONVENING ORDER.

1. Whereas complaint has been made to me, the undersigned, that the person(s) named above as the accused, being subject to military law, has/~~have~~ committed the offence(s) set forth in the Charge Sheet(s) attached and on (*date*) 30 May 46 endorsed by me, (~~who~~/~~which~~), "To be tried by Field General Court-Martial".

2. And whereas I am of opinion that it is not practicable that such offence(s) should be tried by an ordinary General Court-Martial; ~~because~~ ~~the~~ ~~evidence~~ ~~of~~ ~~the~~ ~~witnesses~~ ~~cannot~~ ~~be~~ ~~procured~~ ~~without~~ ~~manifest~~ ~~inconvenience~~ ~~to~~ ~~the~~ ~~public~~ ~~service~~ ~~and~~ ~~the~~ ~~delay~~ ~~occasioned~~ ~~by~~ ~~the~~ ~~postponement~~ ~~of~~ ~~the~~ ~~trial~~ ~~would~~ ~~be~~ ~~prejudicial~~ ~~to~~ ~~good~~ ~~order~~ ~~and~~ ~~military~~ ~~discipline~~ 3M
(Delete part in brackets when not required for compliance with RP 105(C).)

3. I hereby convene a Field General Court-Martial to try the said person(s), and to consist of the Offrs appointed or detailed hereunder.

~~Provided~~ ~~that~~ ~~upon~~ ~~any~~ ~~occasion~~ ~~when~~ ~~the~~ ~~Court~~ ~~is~~ ~~reduced~~ ~~below~~ ~~the~~ ~~number~~ ~~of~~ ~~five~~ ~~members~~ ~~by~~ ~~reason~~ ~~of~~ ~~challenge~~ ~~or~~ ~~otherwise~~ ~~the~~ ~~trial~~ ~~shall~~ ~~not~~ ~~proceed~~ ~~unless~~ ~~the~~ ~~accused~~ ~~consents~~
(AA 49, RP 106(B), 107(A). Delete the whole or part, if not applicable.)

~~Provided~~ ~~that~~ ~~the~~ ~~following~~ ~~officers~~ ~~are~~ ~~not~~ ~~to~~ ~~be~~ ~~detailed~~ ~~for~~ ~~this~~ ~~Court~~
(RP 106(E). Delete, if none appointed.)

PRESIDENT.

(Rank.)	(Must be named. RP 106.)	(Unit.)
Lt Col	C.E. Woodrow OBE, ED	HQ CRU

MEMBERS.

(Rank.)	(Named or detailed. RP 106.)	(Unit.)
Captain	to be detailed from	1 Cdn Repat Dep
Lieut	to be detailed from	1 Cdn Repat Dep
	~~WARRANT OFFICER~~ 3M	
	~~SERGEANT~~ 3M	

(Rank.)	(Must be named, if any. RP 106.)	(Unit.)

On Active Service in the Fd

in England (*Country.*) (*Signed personally. RP 109 fn 2.*) Brigadier (*Rank.*)

Date 30 May 46 Commanding Canadian Repatriation Units (T.J. Rutherford)
Convening Officer.

CONVENING OFFR WILL INITIAL ALL DELETIONS AND ALTERATIONS

(See overleaf for oaths and notes for use on trial.)

MEDICAL OFFICER's REPORT

(KR (Can) 557)

This is to certify that I have this morning medically examined

NO B-37906 PTE FARRINGTON U.E.

and that in my opinion he is (fit / ~~unfit~~) "N.F."

to undergo trial by Court-Martial.

Station TWEEDSMUIR CAMP

Date 31 MAY 46

A Green Capt.

RCAMC
Medical Officer
"1" Wing #1 Cdn Repat Depot

Note:
(All deletions and alterations will be initialled by the M.O.)

Exhibit A/
CEO

SUMMARY OF EVIDENCE

In the case of B 37906 Private Vincent Ernest Farrington, on strength 1 Canadian Repatriation Depot, a soldier of the Canadian Army Overseas.

By direction of the Commanding Officer all evidence is taken on oath.

FIRST WITNESS FOR THE PROSECUTION

Capt W.G.A. Lane, CIC, 1 Canadian Repatriation Depot, having been duly sworn states:

I am Capt W.G.A. Lane, Adjutant "1" Wing, 1 Canadian Repatriation Depot. I present a certified true copy of Declaration of Court of Inquiry held on 2 May 46 on the illegal absence and kit deficiencies of B 37906 Pte Farrington, V.E., signed by Colonel M.B.K. Gordon, Commanding Officer, 1 Canadian Repatriation Depot. (Appended hereto as Exhibit "A").

W.G.A. Lane
.....
W.G.A Lane Capt CIC

The accused declines to cross-examine this witness.

SECOND WITNESS FOR THE PROSECUTION

L108950 L/Cpl Labar, L.W., 1 Canadian Repatriation Depot, having been duly sworn states:

I am L108950 L/Cpl Labar, L.W., "1" Wing, 1 Canadian Repatriation Depot, employed as a RP. I was on duty in the Unit Guard Room from 1600 hrs to 2359 hrs, 21 May 46. B 37906 Pte Farrington, V.E. surrendered himself to me at 1830 hrs on 21 May 46 and was properly dressed. I contacted Records to ascertain if he belonged to this Wing and finding out that he did, I placed him under close arrest.

L.W. Labar
.....
L108950 L/Cpl L.W. Labar

The accused declines to cross-examine this witness.

QUESTION TO THE ACCUSED

Do you wish to make a statement or give evidence upon oath? You are not obliged to say anything or give evidence unless you wish to do so, but whatever you say or any evidence you give will be taken down in writing and may be given in evidence.

ANSWER BY ACCUSED

I have nothing to say.

The accused declines to make a statement, or to give evidence on oath and reserves his defence

I certify that the above Summary of Evidence, consisting of two pages, was taken down by me in the presence and hearing of the accused, and that Rules of Procedure 4 (c) (d) (e) and (f) have been complied with.

J.A. Traplin Lt

(J.A. Traplin) Lt CIC
1 Cdn Repat Depot
Officer detailed to take the
Summary of Evidence

Tweedsmuir Camp
Thursley, Sy.
May 27th, 1946.

Exhibit "A"

RECORD of the Declaration of a Court of Inquiry assembled at Tweedsmuir Camp Thursley, Hants. on the 2nd day of May 1946, for the purpose of investigating and recording the absence, without leave, from his duty, and deficiency, if any, in the Arms, Ammunition, Equipments, Instruments, Regimental Necessaries, or Clothing of No. B-37906 Pte. FARRINGTON, V.E.

DECLARATION

The Court declare that No. B-37906 Pte. FARRINGTON, V.E. "1" Wing, 1 Cdn Repat Depot illegally absented himself without leave from "1" Wing 1 Cdn Repat Depot at 1415 hrs on the 1st day of April 1946, that he is still so absent, and that on the 2 May 46 he was deficient, and that he is still deficient of the following articles :—

ARTICLES	VALUE	ARTICLES	VALUE
AS PER ATTACHED LIST			

Signed at Tweedsmuir Camp, Thursley, Hants.

this 3rd day of May 1946

Capt D.E. Finlayson R Regt of C President
1 Cdn Repat Depot

Lieut A. Keys CIC Member
1 Cdn Repat Depot

Lieut J.K. Rooke RCA Member
1 Cdn Repat Depot

Signature of Commanding Officer Colonel H.E.K. Gordon
#1 Cdn Repat Depot

Certified true copy

Signature of Officer having custody of original record

(W.K. Biggs) Lieut
#1 Cdn Repat Depot

3/608 MFB 375-AFB 115
40/P&S/392 (8703)

Appendix "A"
to PC F

No. 1 Gdn Repatriation Depot
"A" Wing

KIT DEFICIENCIES
B 37906 Pte Farrington V.E.

1 May 46

Article	No.	Vocabulary Price	Vocabulary Price less 25% Depreciation
Badges Cap	1	£ : : 5	£ : : 4
Braces Prs	1	1: 5	1: ½
Brushes Shaving	1	1: 8	1: 3
Brushes Tooth	1	: 6	: 4½
Combs Hair	1	: 2	: 1½
Drawers Cell prs.	1	1:11	1: 8½
Handkerchiefs Khaki	3	1: 5½	1: 1½
Holdalls	1	:10	: 7½
Housewives	1	: 9	: 7
Jersey Pullovers	1	8: 0	6: 0
Knives Clasp	1	3:10	2:10
Razors Safety	1	: 3	: 2½
Shirts Flannel W/C	2	1: 1:6	16: 2
Socks Worsted prs.	3	: 6:1½	4: 9
Ties Black	1	:10	: 7½
Towels Hand	2	3: 0	2: 3
Boots Ankle	2	2:12: 0	1:19:0
Berets Khaki	1	5: 5	4: 1
Greatcoats	1	2:11: 8	1:18: 9
Blouses B.D.	2	2:18: 2	2: 3: 6
Trousers B.D.	2	2:18: 7	2: 3:10
Capes A/G	1	:12: 4	: 9: 3
Attach. Brace	2	: 1: 6	: 1: 2
Bottles Water	1	3: 6	2: 8
Packs MK	1	8: 3	6: 2½
Straps Should Haver.	2	2:10	2: 1
Straps Web Supp.	2	1: 2	:10
	Totals	15: 5: 3	11:11: 1½

"Certified that the above is a true list of the deficiencies of B-37906 Pte. Farrington, V.E. to the best of my knowledge as of 1 May 46.

W.J. Penrose Capt

.....Capt QM
(W.J. Penrose)
No. 1 Gdn Repat Depot "A" Wing.

Pte Ferrington was due to return from leave on the 1st Apr 46. His wife was ill and in child and since she was unable to do the house work and the care of her 6½ year old brother, Ferrington remained behind to help. He was unalbe to get domestic aid and he stayed away until the crisis was over. I know, gentlemen, that this does not sound a reasonable excuse, for being AWL for 50 days but let us look into Ferrington's back ground.

Gentlemen - You have in front of you the MFM 6 of Pte Ferrington - a complte record of this man's service in the Canadian Army. Please, let me enlarge on it and point out a few very important facts.

Ferrington joined the army early in 1940. He left a position with ample opportunities for advancement. - a position which he need never have left since he could have claimed deferrment but he saw his duty. His category was A-1. He was a normal healthy Canadian. His home - his love - his ambition wrapped up in Canada. He had no crimes until he was in the army for several years but it is easy to see why Ferrington changed almost overnight from an ideal soldier. - a Canadian whom any officer should be proud to command - into a man who became a frequenter of the Orderly Room. Remember this man as he limped into the court. Now picture him as he must have been when he joined the army. A lengthy period in action - a wound and nine months in hospital have wrought the change.

He is married and has a child. He is awaiting discharge in the UK and I wish to produce evidence that this discharge has been granted by CMHQ. Please, gentlemen, allow this Canadian soldier to leave this court. Let him get his discharge. He will be at work in England in four days time if this court pleases to be lenient. He will try to regain with his wife and child a little of the happiness which he feels he has been deprived of permanently. Give this man his freedom. He has a job to go to in England, to work in the building trade. This country needs skilled men so in giving the accused a light sentence you not only tend to renew the faith in human nature of a crippled Canadian soldier but you assist to rebuild war-torn Britain.

COPY.

F. HUTTON & SON LTD.

BUILDERS & CONTRACTORS.

BIRCH

COLCHESTER.

CEW/JF. 5th March, 1946.

Private V.E. Farrington, B.37906,
No.1. Canadian Repatriation Depot.,
Thursleigh,
Surrey.

Dear Sir,

With reference to your application to us for employment as a Building Labourer, we can offer you a job at our Daniel Cole Road Building Site where we are erecting Prefabricated Houses.

We understand you are probably being discharged in early April, and this job will be open for you then.

Yours faithfully,

p.p. F. HUTTON & SON, LTD.

"C. E. Wadley"

Director.

10/FARRINGTON VE/1 (AG6).

30 May 46.

30 MAY 1946
CANADIAN ADJUTANT GENERAL
No. 1 C Repat. D
Haven Camp

OC
1 Cdn Repat Depot

DISCHARGE IN UK
B.37906 Pte Farrington, V.E.

Ref telephone conversation Capt Irving - S/Sgt Marr.

2. Att hereto is copy of letter as requested in above telephone conversation.

(E. R. Suttie) Brigadier
Deputy Adjutant-General
CANADIAN MILITARY HEADQUARTERS

Encl:

SDS

NO I CANADIAN REPATRIATION DEPOT
(LORNE SCOTS)

30 May 1946.

TO WHOM IT MAY CONCERN.

B.37906 Pte. FARRINGTON,V.E.
DISCHARGE IN THE UNITED KINGDOM.

1. Authority for the m/n to be discharged in the U.K. issued by C.M.H.Q., under 8/Dis Gen/1 (AG5) dated 15 Mar 46.

2. This OR is to be employed by F.Hutton & Sons Ltd. , Builders Contractors, Birch, Colchester, Essex England, as a building labourer.

(M.B.K. GORDON) COLONEL,
COMMANDING OFFICER,
NO I CDN REPAT DEPOT.

/csw.

Exhibit "B" Cdn

ARMY FORM B.296 (WAR).

Statement as to Character and Particulars of Service of Accused.

(For Use at Trials by Field General Courts-Martial only).

Number.	*Rank.*	*Name.*	*Regiment (or as the case may be).*
B 37906	Private	Vincent Ernest FARRINGTON	1 Cdn Repat Depot

NOTE.—The Field Conduct Sheet to be produced in Court with this statement but is not to be annexed to the proceedings. The numbers herein stated should correspond with the number of Entries in the Field Conduct Sheet, prominence being given to the most serious offence in each entry. If the charge is for drunkenness or absence without leave, the entries for drunkenness or absence, as the case may be, should be stated separately. Any recognized special acts of gallantry or distinguished conduct recorded on the Field Conduct Sheet should also be inserted here.

1. The following is a fair and true summary of the entries in the Field Conduct Sheet of the accused, exclusive of convictions by a court martial or a civil court :—

For Absence without leave AA Sec 15 (1) 8 times.
For _____ _____ times.
For _____ _____ times.
For _____ _____ times.

Date of first entry in Field Conduct Sheet 21 Sep 44
Date of last entry in Field Conduct Sheet 9 Jan 46

2. Previous convictions of the accused by a court martial or a civil court are set out in the Schedule overleaf.

*3. [illegible] Nil

*Strike out if not applicable.

4. The accused has been awaiting trial on the present charges for Nil days in civil custody; and for 9 days in military custody, i.e., Nil days in open arrest, 9 days in close arrest; of which Nil days were spent in hospital.

5. The present age of the accused is 28 years, 6 mos, 7 days
Date of birth: 24 Nov 17

6. The date of his attestation is 1 Jul 40

7. The service which the accused is allowed to reckon is 5 years, ~~11 mos.~~ 10 mos. 10 days

8. The accused is in possession of† 1939-45 Star; Italy Star; Defence Medal, CVSM and Clasp.

9. [illegible]

†State the military decorations (if any) held by accused.

	Date of Promotion.
In the substantive rank of _____	_____
In the war substantive rank of _____	_____
In the acting rank of _____	_____

INSTRUCTION.—*If any matter in any of the above paragraphs cannot be stated from the regimental books the paragraph must be struck through.*

(23094) W.L.42129/4399 42,000 11/44 A.& E.W.Ltd. Gp.698 Form/B.296(War).a

SCHEDULE OF CONVICTIONS BY A COURT-MARTIAL OR CIVIL COURT.

Description of Court by which tried.	Date and Place of Trial.	Charges upon which convicted.	Sentence of the Court.	Punishment remitted or sentence suspended.
FGCM	10 Mar 45 Field	WOA8 AWL from 0800 hrs 5 Feb 45 until 0030 hrs 3 Mar 45. Total time absent: 25 days, 16 hrs, 30 mins. AA Sec 15 (1)	30 days' detn and to forf all ordinary pay for 50 days.	Granted 6 days' remission of sentence
FGCM	5 Nov 45	WOA8 AWL from 0830 hrs 10 Sep 45 until 2245 hrs 25 Oct 45. Total time absent: 45 days, 14 hrs, 15 mins. AA Sec 15 (1)	60 days' detn	Granted 20 days' remission of sentence

I HEREBY CERTIFY that the foregoing particulars, which have been extracted from the regimental books in my custody, are correct to the best of my knowledge and belief.

Signed this 31 day of May 46

W.G.A. Lane

(W.G.A. Lane) Capt & Adjt.,
"1" Wing,
1 Cdn Repat Depot

No. B 37906 Name FARRINGTON, V.E. | Sqn., Battery, or Company | Corps CIC | Date of enlistment 29 Jun 40 | G.C. Badges | Service or Proficiency Pay | M.F.M. 6 (A.F.B. 122) 40/P & S/136 (2637)

Date of last entry in Company Conduct Sheet | No. and date of last drunk | Period not reckoning towards freedom from extra fne | Sheet No. | Signature O.C. Company, etc. | Character

Place	Date of offence	Rank	Cases of drunkenness	OFFENCE	Names of Witnesses	Punishment awarded	Date of award or of order dispensing with trial	By whom awarded	Remarks
				Sheet No. 1 destroyed 29 Jun 42	Doc	Forf 7 days' pay FR&I 149 (2)	26 Sep 44	A.M. Young Lt-Col	Auto forf 3 days' pay FR&I 149 (1) (a)
Field	21 Sep 44	Pte		WOAS AWL from 2359 hrs 21 Sep 44 until surrendering to Unit Guard Room at 2045 hrs 24 Sep 44. Total absence 2 days, 20 hrs, 46 mins. AA Sec 15 (1)					
Field	16 Oct 44	Pte		WOAS AWL from 2200 hrs 16 Oct 44 until appreh by CPC at Cholchester at about 1300 hrs 6 Nov 44. Total absence 20 days, 15 hrs. AA Sec 15 (1)	Doc	28 days' FP 28 days' pay FR&I 149 (2)	9 Nov 44	A.M. Young Lt-Col	Auto forf 21 days' pay FR&I 149 (1) (a). Place under stoppage, cost of appreh in amount of £0-5-10

(P.T.O.)

Place	Date of offence	Rank	Cases of drunkenness	OFFENCE	Names of Witnesses	Punishment awarded	Date of award or of order dispensing with trial	By whom awarded	Remarks
Field	15 Jan 45	Pte		AA Sec 15 (1) WOAS AWL from 0800 hrs 15 Jan 45 to 2355 hrs 21 Jan 45. Absent 6 days, 15 hrs, 55 mins.	Cpl Whyte Cpl Abel	Forf 20 days' pay FR&I 149 (2)	23 Jan 45	Lt-Col C.M. MacMillan	Forf 7 days' pay FR&I 149 (1) (a)
Field	23 May 45	Pte		AA Sec 15 (1) WOAS AWL from 0800 hrs 23 May 45 to 1530 hrs 28 May 45. Absent 5 days, 7 hrs, 30 mins.	S/Sgt Bates CSM Britton	20 days' FP Forf 20 days' pay FR&I 149 (1) (b)	30 May 45	Lt-Col C.M. MacMillan	Forf 6 days' pay FR&I 149 (1) (a)
Field	3 Jul 45	Pte		AA Sec 15 (1) WOAS AWL from 0800 hrs 3 Jul 45 until appreh at 2315 hrs 18 Jul 45. Absent 15 days, 11 hrs, 15 mins. Cost of appreh £1-2-5	Sgt T.E. MacDonald & Doc	Forf 10 days' pay FR&I 149 (2) and 10 days' FP	23 Jul 45	Major J.A. Simpson	Forf 16 days' pay FR&I 149 (1) (a) and cost of appreh £1-2-5

No. B 27906 Name FARRINGTON, VE | Sqn., Battery, or Company | Corps CIC | Date of enlistment 1 Jul 40 | G.C. Badges | Service or Proficiency Pay | M.F.M. 6 (A.F.B. 122) 40/P & S/136 (263)

Date of last entry in Company Conduct Sheet | No. and date of last drunk | Period not reckoning towards freedom from extra fine | Sheet No. | Signature O.C. Company, etc. | Character

Place	Date of offence	Rank	Cases of drunkenness	OFFENCE	Names of Witnesses	Punishment awarded	Date of award or of order dispensing with trial	By whom awarded	Remarks
Field	5 Feb 45	Pte		AA Sec 15 (1) WOAS AWL from 0800 hrs 5 Feb 45 till surrendering himself to CPC at Guildford at 0030 hrs 3 Mar 45. Absent 25 days, 16 hrs, 30 mins.	FGCM	30 days' detn & to forf all ordinary pay for 50 days	10 Mar 45	FGCM	
Field	10 Sep 45	Pte		AWL from 0830 hrs 10 Sep 45 to 2245 hrs 25 Oct 45.	FGCM	60 days' detn	20 Nov 45	FGCM	
Field	9 Jan 46			AA Sec 15 (1) AWL 3 days, 7 hrs, 45 mins. Doc		Forf 8 days' pay FR&I 149 (2)	9 Jan 46		Auto forf 4 days pay FR&I 149 (1) (a)

Certified True Copy of the Original MFM 6 in my possession.

W.G.A. Lane Capt

(W.G.A. Lane) Capt & Adjt.,

29 Jan 46 "1" Wing

1 Cdn Repat Depot

(P.T.O.)

SCHEDULE.

PART I. PLEA(S), FINDING(S) AND SENTENCE.

Accused: B-37906 Pte FARRINGTON, Vincent Ernest - 1 CGRU

	Charge. (Insert "alternative" where applicable.)	Plea. (See Instrs p 2.)	Finding. (See note below.)	(Space for use as required for further charges, accused charged jointly, special findings, etc.)
1st	AA Sec 15(1)	GUILTY	GUILTY	
2nd				
3rd				
4th				
5th				
6th				

(Note: As to findings for lesser offences see AA 56, RP 44; findings on alternative charges see MML p 483 fn 4 para 2, RP 44; special findings see RP 44 and MML p 753, and in loss of kit see RP 44 fn 6.)

~~At present under sentence for~~ ..... ~~beginning on (date)~~ .....(1)

(1. Insert sentence being served, or delete, if not applicable. See RP 46(A). Information should be found on MF B355 or AF B296.)

Time in confinement awaiting present trial—a total of 2.6 days, of which NIL days were spent in hospital.(1)

(1. See RP 46(A) fn 2. Information should be found on MF B355 or AF B296 admitted in evidence under E2.)

Sentence Awarded by the Court:

To undergo Detention for a period of Sixty (60) days.

(Sgd) ..... Judge-Advocate, if any. 20 NOV 45 Date awarded. (Sgd) ..... President. (RP 45, 50.)

(See back of Convening Order as to assembly and disposal of record after trial.)

PART II. MINUTE WHERE CONFIRMATION RESERVED. (AA 54(5), RP 120(F), MML p 760.)

Date ..... (Sgd) ..... Commanding .....

PART III. DECISION OF CONFIRMING OFFR ON FINDING(S) AND SENTENCE.

(For duties and powers see AA 54, 57, RP 37(D) fn 6, 46(A), 51-56, 120, MML pp 759-761, KR Can 567-577. Acquittals require no confirmation and cannot be revised: AA 54(3). Sending back finding or sentence for revision by Court: AA 54(2), RP 120(G). If not confirmed, accused may be tried again: AA 157, MML p 64. Minute of confirmation or non-confirmation may be altered before promulgation: RP 53, MML p 65. Quashing after promulgation: KR Can 573. Duties and powers of reviewing offrs: AA 57, 57A, RP 53A, 54. The Confirming Offr must sign here personally. AA 172 fn 1.)

My decision on the finding(s) and sentence set forth in Part I is:

Confirmed

I ~~direct that the accused be not committed to prison or detention barracks until further orders~~.(1)

(1. AA 57A. Delete if not used.)

Date 22 Nov 45 (Sgd) ..... Brigadier, Commanding "C" Group, Can. Reinforcement Units. Commanding Confirming Officer.

PART IV. PROMULGATED AND EXTRACTS TAKEN. (RP 53, KR Can 576, 577.)

Accused.	Date.	Signature of Offr.
B 37406 Pte Farrington V.E.	24 Nov 45	J.R. Matheson H

ALL DELETIONS AND ALTERATIONS WILL BE INITIALLED.

RECORDED AT CMHQ IN AB 160-P- 5W-46

RECEIVED 7 DEC 45 MILITARY HQ

RECEIVED 16 NOV 45 CANADIAN MILITARY HEADQUARTERS

CFA96 (In lieu of AFA3) 40/P & S/1098 (6144) 4/38B

FIELD GENERAL COURT-MARTIAL

Convened by Order of Brig E.C. Plow, CBE DSO Comd "C" Gp, CRU dated 16 Nov 45

ACCUSED.

(As to the trial of two or more charged jointly see RP 16, 71, 109. As to reasons for showing (a) permanent or confirmed rank, and (b) appmt, A/rank or A/appmt, if any, see AA 182, 183, fns, KR Can 308, 328, 330.)

Number.	(a) Prmnt R. (b) Appmt, A/R or A/Appmt.	Full Christian Names.	Surname.	Unit.
B37906	Pte	Vincent Ernest	FARRINGTON	1 CGRU

PROCEEDINGS REVIEWED

MDec 45 DJ Brody 2

REVIEWING OFFICER, NO. BRANCH, CANADA

PROCEEDINGS OF TRIAL.

Held in the Fd in (country) ..... on (date(s)) 20 NOV 45

RECORD FORM A—OPENING PROCEEDINGS AND ARRAIGNMENT.

A1. The President, Members, ~~waiting Member, JA, if any, and Offrs under instr, if any,~~ assemble, and the Court is closed.

(PRINTED MATTER, NOT IN ITALICS FOR GUIDANCE, WILL BE DELETED, IF NOT USED OR APPLICABLE, AND INITIALLED BY PRES OR JA. The Schedule referred to throughout is on p 4. Citations do NOT include all relevant fmn ROs. For guidance on procedure when a variation in this form arises, see form for GCM in MML pp 741 to 759. A brief record of such variation will be made and given a number having reference to appropriate or preceding para number herein. See back of Convening Order, CF A95, for oaths and instrs on how to record addresses, evidence, etc, which instrs are hereafter called "Notes". As to general provisions for conducting the trial see AA 53, RP 56, 63-70, 73, 74, 94, 103, 119, 132.)

A2. The President initials and lays before the Court the Convening Order and Charge Sheet(s) attached thereto.(1) The Court is satisfied that it is properly convened and constituted(2), accused is ~~(are)~~ amenable to military law, and each charge discloses an offence.(3)

(1. As to use of Summary of Evidence see RP 17 fn 6. 2. AA 49, 50, RP 105-107. 3. RP 11-13, 23, 24.)

A3. The Court is opened. The accused is ~~(are)~~ brought before the Court. At 1420 hours trial commences.

A4. The Prosecutor produces a Medical Certificate that accused is ~~(are)~~ fit to undergo trial by court-martial.(1) ~~The Prosecutor informs the Court that accused elected to be tried by court-martial instead of being dealt with summarily by the CO.~~(2)

(1. KR Can 557. 2. AA 46(8), RP 60 fn 1. For effect see KR Can 563(c). Delete, if not applicable.)

A5. ~~President to accused: Do you object to ..... as interpreter? Ans .....~~

The Interpreter is sworn.(1) Do you object to C.S.M. E.G. PARENT, as shorthand writer? Ans NO

The shorthand writer is sworn.(1)

(1. RP 72. Delete, if none employed.)

A6. The Convening Order and names of the President and Members of the Court are read to the accused.(1) President to accused: Do you object to be tried by me as President or by any of the Members of the Court?

Ans NO, SIR.(2)

(1. RP 110. 2. If no objection, waiting member retires. RP 68(B). If objection, see procedure AA 51, RP 25, 71, 18, MML p 742.)

A7. The President, Members, ~~JA, if any, and Offrs under instr, if any,~~ are sworn.(1) The following are the ranks, names and units of the offrs comprising the Court, etc:

President	LT COL	D.L. REDMAN	HQ CRU
Member	CAPT	H.B. TRITES	1 CGRU
Member	LIEUT	D.J. PAYETTE	1 CGRU
~~Judge-Advocate~~			
Prosecutor	LIEUT	R SKINNER	1 CGRU
Defending Offr	LIEUT	W.E. HAGAN	1 CGRU

Questions by President: Is the Prosecutor a lawyer? Ans NO. Is the Defending Offr a lawyer? Ans NO.(2)

(1. RP 26, 27, 109, 111. List of offrs under instr will be returned separately with proceedings for information of Conv Offr.)
(2. If Pros a lawyer and Def Offr not, accused is entitled to an adjournment when RP 89 (B) and fn 2 were not followed. See DI p 3.)

A8. The accused ..... before arraignment make(s) (no) (~~a~~) plea .....(1)

(1. If a special plea is made for separate trial on one or more charges (RP 62(E), 108), or as to the jurisdiction of the Court (RP 34, 35(A), 113), or in bar of trial (RP 36), or as to accused's mental fitness to stand trial (AA 130, RP 57), or by one of several accused charged jointly to be tried separately (RP 16, 71), such plea, the addresses made in support or against, the evidence, if any, and finding are recorded per Notes. For forms of record see references in fns to RuP cited. Insert in A8 rank and name of the accused making the plea.)

A9. The accused is ~~(are)~~ arraigned ~~(separately)~~ on all charges in the charge sheet.(1) The accused does ~~(do)~~ not object to any charge.(2) There is no amendment to be made to the Charge Sheet.(3) The President records the pleas in Part I of the Schedule.

(1. RP 31, 112. See para 1 of Instrs p 2. When more than one Charge Sheet see RP 62; when several accused to be tried separately see RP 71(C), and use separate copies of CF A96 to record proceedings. 2. RP 32, RP 33. If otherwise, delete and make appropriate record per Notes.)

A10. The Court ~~(is cleared and)~~ considers the Instrs on Procedure after Arraignment at top of p 2. The proceedings are continued on Record Form 5.

PRESIDENT OR JA WILL INITIAL ALL DELETIONS AND ALTERATIONS.

INSTRUCTIONS ON PROCEDURE AFTER ARRAIGNMENT.

1. *The accused may not plead or be found Guilty on more than one of two or more charges laid in the alternative.* (*RP* 37(*A*).) *As to withdrawal of alternative charges by Prosecutor see RP* 35(*C*). *No other charge can be withdrawn for any reason without authy from Convening Offr. If Convening Offr concurs, Court may accept plea of Guilty to lesser, etc, offence.* (*RP* 44(*H*).) *Accused may change a plea of Not Guilty to Guilty during trial.* (*RP* 38.) *As to refusing to plead or not pleading intelligibly see RP* 35(*A*). *As to plea when sentence may be death see RP* 35(*D*).

2. *The proceedings on each charge sheet* (*RP* 62) *after arraignment will be conducted as follows in the respective circumstances stated :*

I. If pleas to all charges are GUILTY, use Record Form B below.

II. If pleas to all charges are NOT GUILTY, use Record Form D on p 3.

III. If pleas to some charges are GUILTY and to other charges are NOT GUILTY and,

(a) Such mixed pleas occur when there are no alternative charges in the Charge Sheet, use Record Form C below. (*RP* 37(*A*).)

(b) Such mixed pleas occur in a set of two or more charges laid in the alternative, see RP 37 (*A*) *and fn* 2 *as to discretion of Court,* (i) *to try the accused on all such alternative charges as if he had pleaded Not Guilty thereto, or,* (ii) *to record the pleas as the findings of Court. After deciding between* (i) *and* (ii), *Court will proceed under foregoing instrs as may be appropriate to result of its decision. See MML p* 744 *Instrs* (2).

3. *As to responsibility of President to accused see RP* 59, 60(*C*) ; *powers and duties of JA see RP* 103 ; *duty of Prosecutor see RP* 60(*A*) (*B*) ; *duty and privileges of accused and Defending Offr see RP* 60(*C*), 87(*C*), 91, 92 ; *swearing and withdrawal of witnesses from Court see RP* 81, 82 ; *questioning of accused see RP* 80, 87(*C*), 92(*B*), *and of witnesses see RP* 83-85 ; *calling or re-calling of witnesses by Court, etc, see RP* 75-79, 86, 116 ; *use of Summary of Evidence at Trial see RP* 17(*E*) *fn* 6 ; *and responsibility of JA or Pres to record proceedings see RP* 94, 96.

RECORD FORM B—PROCEEDINGS ON PLEAS OF GUILTY TO ALL CHARGES.

B1. The President ~~or JA, if any,~~ complies with RP 35(B) by explaining to the accused the nature and meaning of the charge(s)(1), and that on his plea of Guilty there will be no regular trial but merely a consideration of the sentence to be awarded after he has been given an opportunity to make a statement in reference to the charge(s), call witnesses as to character and make an address in mitigation of punishment.(2)
(*1. RP* 35 *fn* 3. 2. *MML p* 54 *para* 47.)

B2. President to accused : The Court will now receive any statement you desire to make in reference to the charge(s).(1) If it appears from your statement that there are circumstances which indicate that you do not understand the effect of the plea of Guilty(2), or which show provocation or extenuation in respect of which in your interest the witnesses for the Prosecution should be examined(3), we shall advise you to change your plea to Not Guilty. In making a statement you will not be sworn or subject to cross-examination ; and anything you say will not be used in evidence against you after you change your plea. If, however, it appears to the Court that your statement affects only the amount of punishment to which you are liable, you will not be advised to change your plea and you will be given an opportunity later to prove your statement by sworn testimony, if you so desire.(4)

President to accused : Do you wish to make a statement ? Ans. NO, SIR.(5)
(*1. RP* 37(*B*). 2. *RP* 37(*D*) *fn* 6. 3. *RP* 35(*B*) *fn* 5 *para* 3, *MML p* 54 *para* 47. 4. *See para E3 of Record Form E.* 5. *Statement, if any, recorded per Notes.*)

B3. ~~The Court considers the accused's statement.(1) The Court decides (not) to advise accused to change his (their) plea(s) of Guilty to Not Guilty on ..... charge(s). The accused is (are) so informed, and he (they) change(s) his (their) plea(s) on ..... charge(s). Part I of the Schedule is amended accordingly.~~
(*1. Court may be closed to consider the statement. Delete whole or part not used.*)

B4. On the charge(s) to which the plea(s) of Guilty is (~~are~~) not changed the President records finding(s) of Guilty in Part I of the Schedule.(1)
(*1. RP* 35(*B*). *If any plea(s) is (are) changed, use Record Form C or D as appropriate.*)

B5. The Summary of Evidence is marked Ex. A, initialled and read aloud by the President.(1)
(*1. If there is no Summary, or if it is inadequate, comply with RP* 37(*B*). *If there is any evidence inconsistent with any plea standing as Guilty, Court will advise accused to change such plea and, if changed to Not Guilty, try such charge(s) by use of paras D1 to D8 inclusive of Record Form D on p* 3. *RP* 37(*D*).)

B6. The accused having been found Guilty on one or more of the charges, the proceedings are concluded by using Record Form E on p 3.

RECORD FORM C—PROCEEDINGS ON MIXED PLEAS OF GUILTY AND NOT GUILTY.

C1. As to the charges on which accused pleaded NOT GUILTY the trial is continued by using paras D1 to D8 inclusive of Record Form D on p 3 before proceeding with C 2.(1)
(*1. RP* 37(*A*) (*E*).)

C2. The charges on which accused pleaded GUILTY are read to him (them) again, and the trial is continued by using paras B1 to B5 of Record Form B above.(1)
(*1. Under* 85 *such parts only of the Summary of Evidence are read as relate to the charges dealt with under C2. If any plea is changed to Not Guilty, trial thereon proceeds by complying with paras D1 to D8 inclusive in Record Form D on p* 3 *and making an appropriate record thereof on a separate sheet.*)

C3. The accused having been found Guilty on one or more of the charges, the proceedings are concluded by using Record Form E on p 3.

PRESIDENT OR JA WILL INITIAL ALL DELETIONS AND ALTERATIONS.

RECORD FORM D—PROCEEDINGS ON PLEAS OF NOT GUILTY TO ALL CHARGES.

D1. President to accused : Do you wish to apply for an adjournment on the ground that any of the rules relating to procedure before trial have not been complied with, and that you have been prejudiced thereby, or on the ground that you have not had sufficient opportunity to prepare your defence ? Ans. .....(1)
(*1. If "yes", see RP* 39(*A*) *for procedure. Statement or evidence, if any, is recorded per Notes.*)

D2. The Prosecutor makes (an) (no) opening address.(1)
(*1. RP* 39(*B*), 60(*A*) (*B*), 90, 92(*C*) (*D*). *Record address per Notes, subject to RP* 95(*C*).)

D3. The evidence for the Prosecution is taken.(1)
(*1. RP* 39(*C*), 114, *KR Can* 555. *Record evidence per Notes. As to Prosecutor giving evidence himself see RP* 39(*D*) (*E*).)

D4. The Prosecution is closed.(1) The Defending Offr submits that the evidence for the Prosecution does not establish a prima facie case against the accused on the ..... charge(s).(2) The Court is closed, and considers the submission.(3) The Court is re-opened, and the President announces that the submission is disallowed on the ..... charge(s), and allowed on the ..... charge(s), and that, accordingly, the trial will proceed on the former, but the accused is (are) found Not Guilty on the latter charge(s).(4)
(*1. Delete remainder of this para, if submission not made.* 2. *Arguments on submission, answer and reply are recorded per Notes.* 3. *RP* 40 *fn* 1. *See MML p* 72 *paras* 12-14 *and p* 81 *para* 42. 4. *Delete part not used. If accused acquitted on all charges, use second alternative in para D8.*)
NB : If trial proceeds, accused must be allowed great latitude in making his defence, and the Court should not stop his defence solely on ground of irrelevance. (*RP* 60(*C*), 114, 115.)

D5. President to accused : You will now proceed with your defence.(1) You may, if you wish, give evidence yourself on oath as to the facts or your character or both, in which case you will be subject to cross-examination.(2) You may, however, make a statement without being sworn, and you will not be subject to cross-examination.(3) But a statement which could have been made on oath will not carry with the Court the same weight as sworn testimony.(4) You may call witnesses in your defence and as to character, whether you give evidence or make a statement or do neither.

President to accused : Do you wish to give evidence yourself as a witness, make a statement, or do neither ?
Ans. ..... Do you intend to call witnesses on your behalf ?
Ans. ..... Are they witnesses as to character only ? Ans. .....
(*1. RP* 115. 2. *RP* 40(*A*), *see* 80(*D*). 3. *RP* 40 *fn* 10. 4. *RP* 40 *fns* 2, 9.)

D6. Consequent on the answers recorded in para D5 the appropriate procedure for the defence is followed.(1)
(*1. RP* 114, 115, 116. *For procedure see Notes on back of Convening Order, CF* A95. *Evidence for accused as to his character should, if in his interest, be given before the finding. See RP* 46(*A*) *fn* 1, 86(*C*). *Note the further opportunity in para E1 of Record Form E. Record per Notes addresses, statement, evidence and any summing up by the JA under RP* 42, 103(*e*).)

D7. The Court is closed to consider the finding(s).(1) The finding(s) of the Court is (are) recorded in Part I of the Schedule.(2) The Court is re-opened.
(*1. RP* 43, 117(*A*). *See Notes in Part I of Schedule.* 2. *RP* 44(*A*).)

D8. The President announces the finding(s), if any, of Not Guilty, and states to the accused that the finding(s) of the Court on the ..... charge(s), being subject to confirmation, will be promulgated later.(1)
Or, The President announces that the accused is found Not Guilty on all charges and is to be released forthwith, and that the proceedings are accordingly terminated. Part I of the Schedule is dated and signed.(2)
(*1. AA* 54(3) (*b*). *RP* 45, 120(*A*). 2. *AA* 54(3). *RP* 45, 117. *This alternative announcement is not applicable when there are pleas of Guilty outstanding and dealt with under Record Form B or C.*)

D9. The accused having been found Guilty on one or more of the charges, the proceedings are concluded by using Record Form E below.

RECORD FORM E—PROCEEDINGS ON CONVICTION BEFORE SENTENCE.

E1. President to accused : Do you wish to give evidence yourself or to call any witnesses as to your character ?(1)
Ans. NO - SIR
(*1. If evidence has already been given by accused or his witnesses as to his character, delete this para. RP* 37(*C*) *fn* 4, 46 *fn* 1. *Accused and witnesses are sworn. Evidence recorded per Notes.*)

E2. The Prosecutor produces Statement(s) as to Character and Particulars of Service(1), and certified true copy (~~copies~~) of Conduct Sheet(s)(2), purporting to refer to the accused, which he submits to the Defending Offr for examination, and then to the Court for admission in evidence. The Court is satisfied that these documents refer to the accused, because (i) they purport to be signed in the manner required by AA 163(l) (g) (h), and (ii) they purport to refer to (a) soldier(s) having the same number, rank, name and corps as the accused. Admitted in evidence and marked Ex. B and Ex. C respectively.(3)
(*1. MFB* 355 *or AFB* 296. 2. *MFM* 6. 3. *RP* 46, *KR Can* 558. *If above documents not produced, see RP* 46 *fn* 1 *para* 1.)

E3. President to accused : Do you wish to address the Court on the Statement(s) and Conduct Sheet(s), and in mitigation of punishment ?(1) Ans. (NOTE A.)(2)
(*1. RP* 37(*C*), 46(*D*). 2. *Address, if any, recorded per Notes. Court should permit accused or his witnesses to prove on oath anything here or previously stated which would affect the amount of punishment. RP* 37(*F*) *fn* 7.)

E4. The President states that the Court is closed to consider the sentence, and that the sentence to be awarded by the Court, being subject to confirmation, will not be announced, but will be promulgated later, and the proceedings in open court are accordingly terminated.(1)
(*1. AA* 54(6). *RP* 120(*A*).)

E5. The Court considers the sentence.(1) The President records the sentence in Part I of the Schedule, which is dated and signed by him ~~and the JA, if any.~~(2)
(*1. When several accused tried separately see RP* 71 (*D*). *One sentence only, comprised of the punishment or punishments laid down in AA* 41, 44 *and its proviso, is to be awarded to cover all charges in all charge sheets on which accused found guilty. RP* 48. *As to sentences see AA* 44, 138, 182, *RP* 46-50, 69, 118, 119(*A*), *KR Can* 308, 325, 563-566, *Overseas RO* 309, 2123, *MML p* 60, 757-759. *As to sentences assigned for civil offences by the law of England see AA* 41(5), *MML p* 130. *When accused already under sentence of imprisonment or detention see AA* 44(1)(*b*), 68(1), *KR Can* 564. 2. *RP* 50. *As to release from arrest by Confirming Offr see KR Can* 567. *As to assembly and disposal of record after trial see instrs on back of Convening Order.*)

PRESIDENT OR JA WILL INITIAL ALL DELETIONS AND ALTERATIONS.

CHARGE SHEET

The Accused, B37906 Pte Vincent Ernest FARRINGTON, C.I.C., on the strength of No. 1 Canadian General Reinforcement Unit, a soldier of the Canadian Army Overseas, is charged with:

FIRST CHARGE — WHEN ON ACTIVE SERVICE

SECTION 15 (1) — ABSENTING HIMSELF WITHOUT LEAVE

ARMY ACT — in that he,

in the Field, absented himself without leave from 0830 hrs 10 Sep 45 until surrendering himself to the Canadian Provost Corps in London at 2245 hrs 25 Oct 45.

Absent: 45 days, 14 hrs, 15 mins.

Comd No 1 Canadian General
Reinforcement Unit
Canadian Army Overseas

Field,

14 Nov 45.

To be tried by Field General Court Martial

Brigadier
Commanding "C" Group, Cdn Reinforcement Units
(Convening Officer)

16 Nov 45
Bordon, Hants.

FIELD GENERAL COURT-MARTIAL

(Whether the accused to be tried is under his comd or not, a FGCM may on application to him be convened by any offr of Cdn Army Overseas, or of any other force if authorized in law, in immediate comd of troops on active service, subject to RP 105(C) and restrictions imposed by appropriate authy. AA 49, 50, RP 104-107, 114. As to the duties and privileges of the Convening Offr in dealing with the application see MML Chap V paras 20 and 23, RP 87(6).

There should be a separate Convening Order for each person to be tried separately by the same Court. RP 71(C), 109. As to separate charge sheets see RP 62, and as to separate trial on charges in the same charge sheet see RP 108. As to two or more accused charged jointly see RP 16, 109.
As to reasons for showing (a) permanent or confirmed rank, and (b) appmt, A/rank or A/appmt, if any, see AA 182, 183, fns, KR Can 308, 328, 330.)

ACCUSED.

Number.	(a) Prmnt R.	(b) Appmt, A/R or A/Appmt.	Full Christian Names.	Surname.	Unit.
B-37906	Pte		Vincent Ernest	FARRINGTON	1 CGRU

CONVENING ORDER.

1. Whereas complaint has been made to me, the undersigned, that the person(s) named above as the accused, being subject to military law, has (~~have~~) committed the offence(s) set forth in the Charge Sheet(s) attached and on (*date*) this date endorsed by me, (~~and whereas the said complaint has been referred to me~~), to be tried by Field General Court-Martial".

2. And whereas I am of opinion that it is not practicable that such offence(s) should (~~should~~) be tried by an ordinary General Court-Martial; (~~and that it is not practicable that the said person should be tried by any other Court to which I have power to refer him~~)
(Delete part in brackets when not required for compliance with RP 104(C).)

3. I hereby convene a Field General Court-Martial to try the said person(s), and to consist of the Offrs appointed or detailed hereunder.

4. ~~Being satisfied on application that it is not practicable that the Offrs to form the Court should be detailed by name, I hereby appoint~~
(AA 49, RP 106(B), 107(A). Delete the whole or part, if not applicable.)

5. ~~I also appoint as Judge Advocate the officer detailed hereunder.~~
(RP 106(E). Delete, if none appointed.)

PRESIDENT.

(Rank.)	(Must be named. RP 106.)	(Unit.)
Lt-Colonel	D.L. Redman, VD	HQ CRU

MEMBERS.

(Rank.)	(Named or detailed. RP 106.)	(Unit.)
Captain	To be detailed by CO	1 CGRU
Lieutenant	To be detailed by CO	1 CGRU
~~(Rank.)~~	~~(Named or detailed, if any. RP 106.)~~	~~(Unit.)~~
~~(Rank.)~~	~~(Must be named, if any. RP 106.)~~	~~(Unit.)~~

On Active Service in the Fd

in ENGLAND (Country.)

(Signed personally. RP 105 fn 2.) Brigadier (Rank.)

Date 16 Nov 45

Commanding "C" Group, Cdn Rft Unit
Convening Officer.

CONVENING OFFR WILL INITIAL ALL DELETIONS AND ALTERATIONS

(See overleaf for oaths and notes for use on trial.)

MEDICAL OFFICER'S REPORT

I certify that No. B. 37906 Pte. Farrington, V.E.
of # 1 C.G.R.U. is in a Fairly Good state of health,
and Fit to undergo Trial by Court martial.

J.E. Lord Capt
Medical Officer

Station Field

Date 20 Nov 45

M. F. B. 246
2M—6-41 (792)
H.Q. 1772-39 480

Plea in Mitigation for B31906 Pte Farrington WC.

Pte Farrington's wife was expecting a child but fell down the stairs and had a miscarriage. As a result of this accident especially since she wanted the child very much she had a bad attack of nerves.

He (Pte Farrington) when he found out about his wife being so ill, applied to his corporal for a pass but was told by his corporal that he didn't have the time to parade him for a pass. He was married in August 15 after almost one year of attempting to get permission from 3 C/TR.

He had no crimes in the army up until he attempted to get permission to marry. The soldier has been in action where he was wounded in the service of his country.

He is 28 yrs old and his wife is again expecting a child. In view of these circumstances I would beg the court because he is needed at home now that they award Pte Farrington a forfeiture of pay as punishment rather than a period of detention.

E-3

W. A. Hagan Lt

SUMMARY OF EVIDENCE

in the case of,

B37906 Pte Vincent Ernest FARRINGTON, C.I.C., on the strength of No. 1 Canadian General Reinforcement Unit, a soldier of the Canadian Army Overseas.

"I produce the following documents, pursuant to Overseas Routine Order 5352, which have been read over and shown to the Accused, and which are attached hereto as Exhibits:"

(1) Certified True Extract from No. 4 Canadian Infantry Depot Battalion Part II Order No. 11 dated 22 Sep 45 which declares in Section "B", para 13, sub-para 13-A that B37906 Pte Farrington V. E. was absent without leave at 0830 hrs 10 Sep 45.
(Marked Exhibit "A")

(2) Certificate under the Army Act, Section 163 (i) (j) dated at London 26 Oct 45 and signed by Capt R L Harrison, DAPM CMHQ which declares that B37906 Pte Farrington V. E. surrendered to the Canadian Provost Corps in London at 2245 hrs 25 Oct 45.
(Marked Exhibit "B")

(J.P. Hodgins) Capt
Officer detailed to take the Summary of Evidence.

THE ACCUSED WAS CAUTIONED AS FOLLOWS:

"Do you wish to make any statement or to give evidence on oath? You are not obliged to say anything or give evidence unless you wish to do so, but whatever you say or any evidence you give will be taken down in writing and may be given in evidence."

The Accused reserves his defence.

The Accused does not call any witnesses.

"I certify that the above Summary of Evidence, consisting of one page, was taken down by me in the presence and hearing of the Accused, and that Rules of Procedure 4 (c) (d) (e) and (f) have been complied with."

(J.P. Hodgins) Capt
Officer detailed to take the Summary of Evidence.

Field,

12 Nov 45.

Exhibit "A"

CERTIFIED TRUE EXTRACT FROM
NO 4 CIDB PART II ORDERS NO
11 DATED 22 SEP 45

LAST ORDER NO 10 19 SEP 45

4 CANADIAN INFANTRY DEPOT BATTALION
DAILY ORDERS PART II
issued by
LT COL H. MASSUE M B E OFFICER COMMANDING

THIS ORDER NO 11 22 SEP 45

SECTION "B" OTHER RANKS

13 ABSENT WITHOUT LEAVE

13-A AWL from 0830 hrs 10 Sep 45. Still AWL at 0830 hrs 18 Sep 45 (8th day)

B-37906 PTE FARRINGTON V E (48th H)

(Sgd) "K.J.C. RIDLEY"
(K.J.C. Ridley) Captain
Records Officer
4 Cdn Inf Dep Bn

CERTIFIED TRUE EXTRACT FROM ORIGINAL DOCUMENT
HELD IN MY POSSESSION.

4 Oct 45

J.R. Mathieu

(J.R. MATHIEU) Lieut RCA
Officer having custody
of original document

Exhibit "B"

CERTIFICATE UNDER THE ARMY ACT, SECTION 163 (1) (i)

I, Capt. R.P.Harrison D.A.P.M. C.M.H.Q. certify that

Reg't, No. B-37906 RANK Pte. NAME Farrington V.E.

REGIMENT No.1.C.G.R.U.

UNIT

STATIONED AT

Surrendered himself to No. A-115932 Rank L/Cpl. Name Stone. E.H.

Of the No.6.(Area) Cdn. Provost Coy.

On the 25 day of Oct. 1945 at London Hours 2245

AS AN ABSENTEE WITHOUT LEAVE

At the time of his surrender he was wearing (Military Uniform) or (~~XXXXXXX~~ ~~XXXXXXX~~.

(Signature of Provost-Marshal, Assistant Provost-Marshal or other Officer Commanding Officer of the portion of His Majesty's Forces or the Officer Warrant Officer, or the non-commissioned Officer in charge of the detachment of the Canadian Provost Corps, Canadian Army, into whose custody the above named person was taken on surrendering. (Strike out part inapplicable).

(R.L.Harrison) Capt.
D.A.P.M. -- C.M.H.Q.

London
26-Oct.45

ARMY FORM B.296 (WAR).

Statement as to Character and Particulars of Service of Accused.

(For Use at Trials by Field General Courts-Martial only).

Number.	*Rank.*	*Name.*	*Regiment (or as the case may be).*
B37906	Pte	FARRINGTON V E	No Cdn Gen Rft Unit

NOTE.—The Field Conduct Sheet is to be produced in Court with this statement but is not to be annexed to the proceedings. The numbers herein stated should correspond with the number of ENTRIES in the Field Conduct Sheet, prominence being given to the most serious offence in each entry. If the charge is for drunkenness or absence without leave, the entries for drunkenness or absence, as the case may be, should be stated separately. Any recognized special acts of gallantry or distinguished conduct recorded on the Field Conduct Sheet should also be inserted here.

1. The following is a fair and true summary of the entries in the Field Conduct Sheet of the accused, exclusive of convictions by a court martial or a civil court :—

For AA 15 (1) ..... 5 times.

[illegible] ..... [illegible]

[illegible] ..... [illegible]

[illegible] ..... [illegible]

Date of first entry in Field Conduct Sheet 15 Jul 44

Date of last entry in Field Conduct Sheet 13 Aug 45

2. Previous convictions of the accused by a court martial or a civil court are set out in the Schedule overleaf.

*Strike out if not applicable.

[illegible] ..... [illegible]

beginning [illegible] ..... days in [illegible]

4. The accused has been awaiting trial on the present charges for ..... days in civil custody; and for 26 days in military custody, *i.e.*, — days in open arrest, 26 days in close arrest; of which — days were spent in hospital.

5. The present age of the accused is 28 yrs

6. The date of his attestation is 1 Jul 40

7. The service which the accused is allowed to reckon is .....

8. The accused is in possession of‡ CVSM & Clasp Italy Star
1939-43 Star
1939-45 Star

[illegible] ..... [illegible]

without production [illegible] ..... [illegible]

‡State the military decorations (if any) held by accused.

E + B

[illegible] ..... [illegible]

[illegible] ..... [illegible]

[illegible] ..... [illegible]

INSTRUCTION.—*If any matter in any of the above paragraphs cannot be stated from the regimental books the paragraph must be struck through.*

(*28072) Wt.30721/3701 82,000 9/44 A.& E.W.Ltd. Gp.690

SCHEDULE OF CONVICTIONS BY A COURT-MARTIAL OR CIVIL COURT.

Description of Court by which tried.	Date and Place of Trial.	Charges upon which convicted.	Sentence of the Court.	Punishment remitted or sentence suspended.
FGCM	10 Mar 45	AA 15 (1)	30 days detn	6 days remission earned

I HEREBY CERTIFY that the foregoing particulars, which have been extracted from the regimental books in my custody, are correct to the best of my knowledge and belief.

Signed this 20th day of November, 1945

J Fllwodgin Capt
Legal Officer
1 C & R.U.

THE CASE OF B37906 Pte Vincent Ernest FARRINGTON

(i) LIST OF WITNESSES FOR PROSECUTION

Nil

(ii) LIST OF WITNESSES FOR DEFENCE

Nil

(iii) LIST OF EXHIBITS FOR PROSECUTION

(a) Certified True Extract from No. 4 CIDB Part II Order No. 11 dated 22 Sep 45 concerning the absence without leave of B37906 Pte Farrington V.E. (Marked Exhibit "A")

(b) Certificate under the Army Act, Sec 163 (1)(j) dated 26 Oct 45 concerning the surrender of B37906 Pte Farrington, V.E. (Marked Exhibit "B")

(iv) LIST OF EXHIBITS FOR DEFENCE

Nil

(v) RECEIPT BY ACCUSED FOR COPY OF CHARGE SHEET AND SUMMARY OF EVIDENCE.

I hereby acknowledge that I have been served with a true copy of the Summary of Evidence taken in the Field, preliminary to my Court Martial. I further acknowledge that I have been served with a true copy of the charge under which I am being brought to Court Martial.

V.E. Farrington
(B37906 Pte Farrington V E)

(vi) APPLICATION BY ACCUSED FOR DEFENDING OFFICER

I hereby request that the Convening Officer appoint an Officer to represent me at my trial.

I desire the services of LT. HAGEN
if he is available.

V.E. Farrington
(B37906 Pte Farrington V E)

Signed in the Field,

this 14 day of Nov 45

H.Q.C. 55-F-871 CONFIDENTIAL [redacted]

DEPARTMENT OF NATIONAL DEFENCE—OTTAWA, CANADA

SUBJECT

FIELD GENERAL COURT-MARTIAL

FARRELL, PATRICK ALEX F-3310

CENTRAL REGISTRY	DATE	P.A. OR B.F.	INITIALS	REFERRED TO	FOR	INITIALS	DATE
				(If purpose for which referred cannot be expressed on one line, enter here "With Minute.")			2-12-4[illegible]

CONFIDENTIAL
H.Q.C. 55-F-871

OVERSEAS COMBINED

NOTICE

1. Files should be retained no longer than absolutely necessary. If a file is frequently needed at short intervals, it is better for R.F. to for one or three days than keep it out of Central Registry indefinitely. This ensures it being completed and kept in order, and also gives other offices an opportunity to use same.
2. Central Registry should be notified whenever a file is passed direct to another branch. PASS THIS FILE IN ENVELOPE
3. All correspondence between branches should pass through C.R.

SCHEDULE.

PART I. PLEA(S), FINDING(S) AND SENTENCE.

Accused: F.33102 TPR. PATRICK ALEX FARRELL CAC TRG UNIT

Charge. (Insert " alternative " where applicable.)	Plea. (See instrs p 2.)	Finding. (See note below.)	(Space for use as required for further charges, accused charged jointly, special findings, etc.)
1st	GUILTY	GUILTY	
2nd			
3rd			
4th			
5th			
6th			

(Note : As to findings for lesser offences see AA 56, RP 44 ; findings on alternative charges see MML p 483 fn 4 para 2, RP 44 ; special findings see RP 44 and MML p 753, and in loss of kit see RP 44 fn 6.)

~~At present under sentence for~~ ~~beginning on (date)~~ (1)

(1. Insert sentence being served, or delete, if not applicable. See RP 46(A). Information should be found on MF B355 or AF B296.)

Time in ~~confinement~~ ~~or Det. camp~~ awaiting present trial—a total of 38 days, of which 0 days were spent in hospital.(1)

(1. See RP 46(A) fn 2. Information should be found on MF B355 or AF B296 admitted in evidence under E2.)

Sentence Awarded by the Court: To undergo detention for 30 days.

(Sgd) W. A. Bate Capt — Judge-Advocate, if any.

3 Jul 44 — Date awarded.

(Sgd) [signature] — President. (RP 45, 50.)

(See back of Convening Order as to assembly and disposal of record after trial.)

PART II. MINUTE WHERE CONFIRMATION RESERVED. (AA 54(5), RP 120(F), MML p 760.)

Date ..... (Sgd) ..... Commanding .....

PART III. DECISION OF CONFIRMING OFFR ON FINDING(S) AND SENTENCE.

(For duties and powers see AA 54, 57, RP 37(D) fn 6,46(A), 51-56, 120, MML pp 759-761, KR Can 567-577. Acquittals require no confirmation and cannot be revised : AA 54(3). Sending back finding or sentence for revision by Court : AA 54(2), RP 120(G). If not confirmed, accused may be tried again : AA 157, MML p 64. Minute of confirmation or non-confirmation may be altered before promulgation : RP 53, MML p 65. Quashing after promulgation : KR Can 573. Duties and powers of reviewing offrs : AA 57, 57A, RP 53A, 54. The Confirming Offr must sign here personally. AA 172 fn 1.)

My decision on the finding(s) and sentence set forth in Part I is :

Confirmed

~~I direct that the accused be not committed to prison or detention barracks until further orders.~~(1)

(1. AA 57A. Delete if not used.)

(Sgd) G.W. Haldenby Brig

Date 3 July 44 — Commanding COMMANDER 1 CDN BASE RET GROUP — Confirming Officer.

PART IV. PROMULGATED AND EXTRACTS TAKEN. (RP 53, KR Can 576, 577.)

Accused.	Date.	Signature of Offr.
F.33102 Tpr. P.A. Farrell.	18th July 1944.	[signature] Comd. 1 A Bde

ALL DELETIONS AND ALTERATIONS WILL BE INITIALLED.

15.7.44

RECEIVED 18 SEP 1944 JAG BRANCH C.M.H.Q.

RECORDED AT CMHQ IN AB 168/4 VVV-1150

FIELD GENERAL COURT-MARTIAL

CFA96 (in lieu of AFA81) 40/P & S/1698 (4810) 4/38B

By Order of BRIG. E.W. HALDENBY Comd 1 CDN BDE dated 29 JUN 44

ACCUSED.

(As to the trial of two or more charged jointly see RP 16, 71, 109. As to reasons for showing (a) permanent or confirmed rank, and (b) appmt, A/rank or A/appmt, if any, see AA 182, 183, fns, KR Can 308, 328, 330.)

Number.	(a) Prmnt R. (b) Appmt, A/R or A/Appmt.	Full Christian Names.	Surname.	Unit
F.33102	TPR	PATRICK ALEX	FARRELL	CAC TRG UNIT

PROCEEDINGS REVIEWED 19 Sep 44 H.C. Poole Capt. REVIEWING OFFICER, JAG BRANCH C.M.H.Q.

I.131

PROCEEDINGS OF TRIAL.

Held in the Fd in (country) ITALY on (date(s)) 3 JUL 44

RECORD FORM A—OPENING PROCEEDINGS AND ARRAIGNMENT.

2A 33

A1. The President, Members, waiting Member, JA, if any, and Offrs under instr, if any, assemble, and the Court is closed.

(PRINTED MATTER, NOT IN ITALICS FOR GUIDANCE, WILL BE DELETED, IF NOT USED OR APPLICABLE, AND INITIALLED BY PRES OR JA. The Schedule referred to throughout is on p 4. Citations do NOT include all relevant fmn ROs. For guidance on procedure when a variation in this form arises, see form for GCM in MML pp 741 to 759. A brief record of such variation will be made and given a number having reference to appropriate or preceding para number herein. See back of Convening Order, CF A95, for oaths and instrs on how to record addresses, evidence, etc, which instrs are hereafter called "Notes". As to general provisions for conducting the trial see AA 53, RP 56, 63-70, 73, 74, 94, 103, 119, 132.)

A2. The President initials and lays before the Court the Convening Order and Charge Sheet ~~(s)~~ attached thereto.(1) The Court is satisfied that it is properly convened and constituted(2), accused is ~~(are)~~ amenable to military law, and each charge discloses an offence.(3)

(1. As to use of Summary of Evidence see RP 17 fn 6. 2. AA 49, 50, RP 105-107. 3. RP 11-13, 23, 24.)

A3. The Court is opened. The accused is ~~(are)~~ brought before the Court. At 1030 hours trial commences.

A4. The Prosecutor produces a Medical Certificate that accused is (are) fit to undergo trial by court-martial.(1) ~~The Prosecutor informs the Court that accused elected to be tried by court-martial instead of being dealt with summarily by the CO.~~(2)

(1. KR Can 557. 2. AA 46(B), RP 60 fn 1. For effect see KR Can 563(c). Delete, if not applicable.)

A5. President to accused : Do you object to ..... as interpreter ? Ans .....

The Interpreter is sworn.(1) Do you object to ..... as shorthand writer ? Ans .....

The shorthand writer is sworn.(1)

(1. RP 72. Delete, if none employed.)

A6. The Convening Order and names of the President and Members of the Court are read to the accused.(1)

President to accused : Do you object to be tried by me as President or by any of the Members of the Court ?

Ans NO SIR (2)

(1. RP 110. 2. If no objection, waiting member retires. RP 68(B). If objection, see procedure AA 51, RP 25, 71, 18, MML p 742.)

A7. The President, Members, JA, if any, and Offrs under instr, if any, are sworn.(1) The following are the ranks, names and units of the offrs comprising the Court, etc :

President	MAJOR	D.M. ARCHIBALD (CK)	8 BN 2 CBRD
Member	LT.	A.J. MacRAE (RCASC)	2 CDN REALLOCATION CENTRE
Member	LT.	R. PAQUETTE (CK)	8 BN 2 CBRD
Judge-Advocate	CAPT.	W.B. BATE ADJA	HQ 1 CBRB
Prosecutor	CAPT.	S.A. NICOL	CAC TRG UNIT
Defending Offr	LT.	A.E. ARMSTRONG	CAC TRG UNIT

Questions by President : Is the Prosecutor a lawyer ? Ans NO Is the Defending Offr a lawyer ? Ans NO (2)

(1. RP 26, 27, 109, 111. List of offrs under instr will be returned separately with proceedings for information of Conv Offr.)
(2. If Pros a lawyer and Def Offr not, accused is entitled to an adjournment when RP 89 (8) and fn 2 were not followed. See DI p 3.)

A8. The accused ..... before arraignment make(s) (no) ~~(s)~~ plea ..... (1)

(1. If a special plea is made for separate trial on one or more charges (RP 62(E), 108), or as to the jurisdiction of the Court (RP 34, 35(A), 113), or in bar of trial (RP 36), or as to accused's mental fitness to stand trial (AA 130, RP 57), or by one of several accused charged jointly to be tried separately (RP 16, 71), such plea, the addresses made in support or against, the evidence, if any, and finding are recorded per Notes. For forms of record see references in fns to RsP cited. Insert in A8 rank and name of the accused making the plea.)

A9. The accused is ~~(are)~~ arraigned (separately) on all charges in the charge sheet.(1) The accused does ~~(do)~~ not object to any charge.(2) There is no amendment to be made to the Charge Sheet.(3) The President records the pleas in Part I of the Schedule.

(1. RP 31, 112. See para 1 of Instrs p 2. When more than one Charge Sheet see RP 62 ; when several accused to be tried separately see RP 71(C), and use separate copies of CF A96 to record proceedings. 2. RP 32, RP 33. If otherwise, delete and make appropriate record per Notes.)

A10. The Court ~~(is closed and)~~ considers the Instrs on Procedure after Arraignment at top of p 2. The proceedings are continued on Record Form 5

PRESIDENT OR JA WILL INITIAL ALL DELETIONS AND ALTERATIONS.

INSTRUCTIONS ON PROCEDURE AFTER ARRAIGNMENT.

1. *The accused may not plead or be found Guilty on more than one of two or more charges laid in the alternative. (RP 37(A).) As to withdrawal of alternative charges by Prosecutor see RP 35(C). No other charge can be withdrawn for any reason without authy from Convening Offr. If Convening Offr concurs, Court may accept plea of Guilty to lesser, etc, offence. (RP 44(H).) Accused may change a plea of Not Guilty to Guilty during trial. (RP 38.) As to refusing to plead or not pleading intelligibly see RP 35(A). As to plea when sentence may be death see RP 35(D).*

2. *The proceedings on each charge sheet (RP 62) after arraignment will be conducted as follows in the respective circumstances stated :*

I. If pleas to all charges are GUILTY, use Record Form B below.

II. If pleas to all charges are NOT GUILTY, use Record Form D on p 3.

III. If pleas to some charges are GUILTY and to other charges are NOT GUILTY and,

(a) Such mixed pleas occur when there are no alternative charges in the Charge Sheet, use Record Form C below. (RP 37(A).)

(b) Such mixed pleas occur in a set of two or more charges laid in the alternative, see RP 37 (A) and fn 2 as to discretion of Court, (i) to try the accused on all such alternative charges as if he had pleaded Not Guilty thereto, or, (ii) to record the pleas as the findings of Court. After deciding between (i) and (ii), Court will proceed under foregoing instrs as may be appropriate to result of its decision. See MML p 744 Instrs (2).

3. *As to responsibility of President to accused see RP 59, 60(C) ; powers and duties of JA see RP 103 ; duty of Prosecutor see RP 60(A) (E) ; duty and privileges of accused and Defending Offr see RP 60(C), 87(C), 91, 92 ; swearing and withdrawal of witnesses from Court see RP 81, 82 ; questioning of accused see RP 80, 87(C), 92(B), and of witnesses see RP 83-85 ; calling or re-calling of witnesses by Court, etc, see RP 75-79, 86, 116 ; use of Summary of Evidence at Trial see RP 17(E) fn 6 ; and responsibility of JA or Pres to record proceedings see RP 94, 96.*

RECORD FORM B—PROCEEDINGS ON PLEAS OF GUILTY TO ALL CHARGES.

B1. The President or JA, if any, complies with RP 35(B) by explaining to the accused the nature and meaning of the charge(s)(1), and that on his plea of Guilty there will be no regular trial but merely a consideration of the sentence to be awarded after he has been given an opportunity to make a statement in reference to the charge(s), call witnesses as to character and make an address in mitigation of punishment.(2)

(1. RP 35 fn 3. 2. MML p 54 para 47.)

B2. President to accused : The Court will now receive any statement you desire to make in reference to the charge(s).(1) If it appears from your statement that there are circumstances which indicate that you do not understand the effect of the plea of Guilty(2), or which show provocation or extenuation in respect of which in your interest the witnesses for the Prosecution should be examined(3), we shall advise you to change your plea to Not Guilty. In making a statement you will not be sworn or subject to cross-examination ; and anything you say will not be used in evidence against you after you change your plea. If, however, it appears to the Court that your statement affects only the amount of punishment to which you are liable, you will not be advised to change your plea and you will be given an opportunity later to prove your statement by sworn testimony, if you so desire.(4)

President to accused : Do you wish to make a statement ? Ans NO SIR. (5)

(1. RP 37(B). 2. RP 37(D) fn 6. 3. RP 35(B) fn 5 para 3, MML p 54 para 47. 4. See para E3 of Record Form E. 5. Statement, if any, recorded per Notes.)

B3. The Court considers the accused's statement.(1) The Court decides (not) to advise accused to change his (their) plea(s) of Guilty to Not Guilty on ..... charge(s). The accused is (are) so informed, and he (they) change(s) his (their) plea(s) on ..... charge(s). Part I of the Schedule is amended accordingly.

(1. Court may be closed to consider the statement. Delete whole or part not used.)

B4. On the charge(s) to which the plea(s) of Guilty is (are) not changed the President records finding(s) of Guilty in Part I of the Schedule.(1)

(1. RP 35(B). If any plea(s) is (are) changed, use Record Form C or D as appropriate.)

B5. The Summary of Evidence is marked Ex ....., initialled and read aloud by the President.(1)

(1. If there is no Summary, or if it is inadequate, comply with RP 37(B). If there is any evidence inconsistent with any plea standing as Guilty, Court will advise accused to change such plea and, if changed to Not Guilty, try such charge(s) by use of paras D1 to D8 inclusive of Record Form D on p 3. RP 37(D).)

B6. The accused having been found Guilty on one or more of the charges, the proceedings are concluded by using Record Form E on p 3.

RECORD FORM C—PROCEEDINGS ON MIXED PLEAS OF GUILTY AND NOT GUILTY.

C1. As to the charges on which accused pleaded NOT GUILTY the trial is continued by using paras D1 to D8 inclusive of Record Form D on p 3 before proceeding with C 2.(1)

(1. RP 37(A) (E).)

C2. The charges on which accused pleaded GUILTY are read to him (them) again, and the trial is continued by using paras B1 to B5 of Record Form B above.(1)

(1. Under B5 such parts only of the Summary of Evidence are read as relate to the charges dealt with under C2. If any plea is changed to Not Guilty, trial thereon proceeds by complying with paras D1 to D8 inclusive in Record Form D on p 3 and making an appropriate record thereof on a separate sheet.)

C3. The accused having been found Guilty on one or more of the charges, the proceedings are concluded by using Record Form E on p 3.

PRESIDENT OR JA WILL INITIAL ALL DELETIONS AND ALTERATIONS.

RECORD FORM D—PROCEEDINGS ON PLEAS OF NOT GUILTY TO ALL CHARGES.

D1. President to accused : Do you wish to apply for an adjournment on the ground that any of the rules relating to procedure before trial have not been complied with, and that you have been prejudiced thereby, or on the ground that you have not had sufficient opportunity to prepare your defence ? Ans ..... (1)

(1. If "yes", see RP 39(A) for procedure. Statement or evidence, if any, is recorded per Notes.)

D2. The Prosecutor makes (an) (no) opening address.(1)

(1. RP 39(B), 60(A) (B), 90, 92(C) (D). Record address per Notes, subject to RP 95(C).)

D3. The evidence for the Prosecution is taken.(1)

(1. RP 39(C), 114, KR Can 555. Record evidence per Notes. As to Prosecutor giving evidence himself see RP 39(D) (E).)

D4. The Prosecution is closed.(1) The Defending Offr submits that the evidence for the Prosecution does not establish a prima facie case against the accused on the ..... charge(s).(2) The Court is closed, and considers the submission.(3) The Court is re-opened, and the President announces that the submission is disallowed on the ..... charge(s), and allowed on the ..... charge(s), and that, accordingly, the trial will proceed on the former, but the accused is (are) found Not Guilty on the latter charge(s).(4)

(1. Delete remainder of this para, if submission not made. 2. Arguments on submission, answer and reply are recorded per Notes. 3. RP 40 fn 1. See MML p 72 paras 12-14 and p 81 para 42. 4. Delete part not used. If accused acquitted on all charges, use second alternative in para D6.)

NB : If trial proceeds, accused must be allowed great latitude in making his defence, and the Court should not stop his defence solely on ground of irrelevance. (RP 60(C), 114, 115.)

D5. President to accused : You will now proceed with your defence.(1) You may, if you wish, give evidence yourself on oath as to the facts or your character or both, in which case you will be subject to cross-examination.(2) You may, however, make a statement without being sworn, and you will not be subject to cross-examination.(3) But a statement which could have been made on oath will not carry with the Court the same weight as sworn testimony.(4) You may call witnesses in your defence and as to character, whether you give evidence or make a statement or do neither.

President to accused : Do you wish to give evidence yourself as a witness, make a statement, or do neither ?

Ans ..... Do you intend to call witnesses on your behalf ?

Ans ..... Are they witnesses as to character only ? Ans .....

(1. RP 115. 2. RP 40(A), see 60(D). 3. RP 40 fn 10. 4. RP 40 fns 2, 9.)

D6. Consequent on the answers recorded in para D5 the appropriate procedure for the defence is followed.(1)

(1. RP 114, 115, 116. For procedure see Notes on back of Convening Order, CF A95. Evidence for accused as to his character should, if in his interest, be given before the finding. See RP 46(A) fn 1, 86(C). Note the further opportunity in para E1 of Record Form E. Record per Notes addresses, statement, evidence and any summing up by the JA under RP 42, 103(e).)

D7. The Court is closed to consider the finding(s).(1) The finding(s) of the Court is (are) recorded in Part I of the Schedule.(2) The Court is re-opened.

(1. RP 43, 117(A). See Notes in Part I of Schedule. 2. RP 44(A).)

D8. The President announces the finding(s), if any, of Not Guilty, and states to the accused that the finding(s) of the Court on the ..... charge(s), being subject to confirmation, will be promulgated later.(1)

Or, The President announces that the accused is found Not Guilty on all charges and is to be released forthwith, and that the proceedings are accordingly terminated. Part I of the Schedule is dated and signed.(2)

(1. AA 54(3) (6), RP 45, 120(A). 2. AA 54(3), RP 45, 117. This alternative announcement is not applicable when there are pleas of Guilty outstanding and dealt with under Record Form B or C.)

D9. The accused having been found Guilty on one or more of the charges, the proceedings are concluded by using Record Form E below.

RECORD FORM E—PROCEEDINGS ON CONVICTION BEFORE SENTENCE.

E1. President to accused : Do you wish to give evidence yourself or to call any witnesses as to your character ?(1)

Ans NO SIR.

(1. If evidence has already been given by accused or his witnesses as to his character, delete this para. RP 37(C) fn 4, 46 fn 1. Accused and witnesses are sworn. Evidence recorded per Notes.)

E2. The Prosecutor produces Statement(s) as to Character and Particulars of Service(1), and certified true copy (copies) of Conduct Sheet(s)(2), purporting to refer to the accused, which he submits to the Defending Offr for examination, and then to the Court for admission in evidence. The Court is satisfied that these documents refer to the accused, because (i) they purport to be signed in the manner required by AA 163(l) (g) (h), and (ii) they purport to refer to (a) soldier(s) having the same number, rank, name and corps as the accused. Admitted in evidence and marked Ex G and Ex H respectively.(3)

(1. MFB 355 or AFB 296. 2. MFM 6. 3. RP 46, KR Can 558. If above documents not produced, see RP 46 fn 1 para 1.)

E3. President to accused : Do you wish to address the Court on the Statement(s) and Conduct Sheet(s), and in mitigation of punishment ?(1) Ans Yes I was away conducting Officer (2)

(1. RP 37(C), 46(D). 2. Address, if any, recorded per Notes. Court should permit accused or his witnesses to prove on oath anything here or previously stated which would affect the amount of punishment. RP 37(F) fn 7.)

E4. The President states that the Court is closed to consider the sentence, and that the sentence to be awarded by the Court, being subject to confirmation, will not be announced, but will be promulgated later, and the proceedings in open court are accordingly terminated.(1)

(1. AA 54(6), RP 120(A).)

E5. The Court considers the sentence.(1) The President records the sentence in Part I of the Schedule, which is dated and signed by him and the JA, if any.(2)

(1. When several accused tried separately see RP 71 (D). One sentence only, comprised of the punishment or punishments laid down in AA 41, 44 and its proviso, is to be awarded to cover all charges in all charge sheets on which accused found guilty. RP 48. As to sentences see AA 44, 138, 182, RP 46-50, 69, 118, 119(A), KR Can 308, 330, 563-566, Overseas RO 309, 2323, MML p 60, 757-759. As to sentences assigned for civil offences by the law of England see AA 41(3), MML p 120. When accused already under sentence of imprisonment or detention see AA 44(1B), 68(1), KR Can 564. 2. RP 50. As to release from arrest by Confirming Offr see KR Can 567. As to assembly and disposal of record after trial see instrs on back of Convening Order.)

PRESIDENT OR JA WILL INITIAL ALL DELETIONS AND ALTERATIONS.

A.L.G.

W.B.B.

CHARGE SHEET

The accused, F33102 Tpr. Patrick Alex Farrell
CAC Trg Unit, a soldier of the Canadian Army Overseas
is charged with.

First Charge
AA Sec 40

When on Active Service, neglect to the prejudice
of Good Order and Military Discipline
in that he
in the field, in Italy on or about 25 May 44 so
negligently handled a TSMG as to cause it to
discharge thereby injuring H1615 Tpr. De Groot
A., CAC Trg Unit.

In the Field
In Italy
June 44

(W.E. Dunbar) Major
Commanding
CAC Trg Unit
Cdn Army, C.M.F.

To be tried by Field General Court Martial.

D.R.S. Hinkson
for/c 1CBRGp
(E.W. Haldenby) Brigadier
Commander
1 Cdn Base Rft Gp
Cdn Army CMF

In the Field
In Italy
29 Jun 44

W.B.B.

Adgt

FIELD GENERAL COURT-MARTIAL

CFA95 (In lieu of AFA3)
40/FA3/1697 (2868)

(Whether the accused to be tried is under his comd or not, a FGCM may on application to him be convened by any offr of Cdn Army Overseas, or of any other force if authorized in law, in immediate comd of troops on active service, subject to RP 105(C) and restrictions imposed by appropriate authy. AA 49, 50, RP 104-107, 114. As to the duties and privileges of the Convening Offr in dealing with the application see MML Chap V paras 20 and 23, RP 87(B).

There should be a separate Convening Order for each person to be tried separately by the same Court. RP 71(C), 109. As to separate charge sheets see RP 62, and as to separate trial on charges in the same charge sheet see RP 108. As to two or more accused charged jointly see RP 16, 109.

As to reasons for showing (a) permanent or confirmed rank, and (b) apprnt, A/rank or A/apprnt, if any, see AA 182, 183, fns, KR Can 308, 328, 330.)

ACCUSED.

Number.	(a) Prmnt R.	(b) Apprnt, A/R or A/Apprnt.	Full Christian Names.	Surname.	Unit.
F.33102	Tpr		Patrick Alex	FARRELL,	CAC Trg Unit

CONVENING ORDER.

1. Whereas complaint has been made to me, the undersigned, that the person(s) named above as the accused, being subject to military law, has ~~(have)~~ committed the offence(s) set forth in the Charge Sheet(s) attached and on *(date)* 29 Jun 44 endorsed ~~by me, (or~~ by an offr of my staff for me), " To be tried by Field General Court-Martial ". E.W.H

2. And whereas I am of opinion that it is not practicable that such offence(s) should be tried by an ordinary General Court-Martial ; ~~(and that it is not practicable to delay the trial for reference to a superior qualified offr).~~ E.W.H
(Delete part in brackets when not required for compliance with RP 105(C).)

3. I hereby convene a Field General Court-Martial to try the said person(s), and to consist of the Offrs appointed or detailed hereunder.

4. ~~I am unable to appoint (a) three Offrs to form the Court, (b) a Fd Offr as President, for the reasons I have attached hereto.~~ E.W.H
(AA 49, RP 106(B), 107(A). Delete the whole or part, if not applicable.)

5. I also appoint as Judge-Advocate thereat the Offr mentioned hereunder. E.W.H
(RP 106(E). Delete, if none appointed.)

PRESIDENT.

Major (Rank.) D.M. ARCHIBALD (CIC) (Must be named. RP 106.) 8 Bn, 2 CBRD (Unit.)

MEMBERS.

Capt E.D. THOMPSON (RCA) 2 Cdn Reallocation Centre

Lt (Rank.) R. PAQUETTE (CIC) (Named or detailed. RP 106.) 8 Bn, 2 CBRD (Unit.)

WAITING MEMBER.

Capt or Lt to be detailed by OC 2 Cdn Reallocation Centre
(Rank.) (Named or detailed, if any. RP 106.) (Unit.)

JUDGE-ADVOCATE.

Capt (Rank.) W.B. BATE (Must be named, if any. RP 106.) ADJA HQ 1 Cdn Base Rft Gp (Unit.)

On Active Service in the Fd

in Italy (Country.)

(Signed personally, RP 105 fn 2) E.W. Haldenby Brigadier (Rank.)
Commander

Date 29 Jun 44 Commanding 1 Cdn Base Rft Group CA, CMF
Convening Officer.

CONVENING OFFR WILL INITIAL ALL DELETIONS AND ALTERATIONS

(See overleaf for oaths and notes for use on trial.)

MEDICAL OFFICER'S CERTIFICATE
(K.R. Can. 557)

I certify that I have this morning examined R.33102 Tpr. Farrell, P.A. of C.A.C. Trng. Unit and in my opinion he is fit to undergo trial by Court Martial.

3 Jul 44

Capt
Medical Officer

Officers Under Instruction.

Capt. T. Hulme (CIC) 2 Bn ICBRD.
Lt. B.A.C. Caldwell (CIC) 3 Bn ICBRD.

Capt. E.D. Thompson was not available to sit as a member. Visiting Member taken his place.
E.S.

Defence Offr. Clear in interrogation.

There was nothing wilful about the accused's action. It was purely accidental. I have been assured this would have been handled by the C.O. of any unit were there not an R.O. making a CM automatic. The accused readily admitted his slipshot. No argument took place. The accused & Dr Frost were friends living in same hut. Accused has been in Close arrest since 25 May 44. If the case had been considered serious he would have been under close arrest. The accused has suffered enough mentally since the accident to realize the seriousness of his act.

(2)

This condenser sheet is good - only one entry.

Exhibit "F."

D. [illegible] Lt. Col. Major
Pres.

W. B. Scott Capt.
Judge Advocate

Summary of Evidence
in the case of

F 33102 Tpr. FARRELL, P.A.

Canadian Armoured Corps Training Unit
1 Armoured Reinforcement Regt (R.A.C.)

By direction of the Commanding Officer, evidence will be taken on oath.

FIRST WITNESS

Lieut. W. AMBROSE - CACTU.

Lieut W. AMBROSE, having been duly sworn, states:

I am Lieut. W. Ambrose, reinforcement Officer, at present at C.A.C.T.U. I have been employed as G.M.T. training Officer of the Recce. Sqn. On 26th May 44, after the 1330 hrs. parade, I commenced to draw weapons and ammunition from stores and put the men of my troop cleaning weapons and grenades for the following days training on the range. At about 1445 hrs. 26th May 44, I was passing the Sqn. orderly room, when I heard what seemed to be two shots from a T.S.M.G. On turning to investigate, I saw Tpr. Desilcat, one of my troops, running from a tent. When he saw me, he told me that a man had been shot. I told him to get the medical orderly, and I went to the tent from which Tpr. Desilcat had come. On entering the tent, I saw Tpr. De Groot, one of my troops, lying on the tent floor on his right side. He was groaning and there was a small amount of blood on the floor, which seemed to be coming from his chest. There was a hole in the back of his coveralls. Tpr. Farrell, of my troop, was standing by the tent pole. On the floor was a T.S.M.G. and a magazine, which had some rounds in it. About this time, 1450 hrs, the medical orderly entered the tent and proceeded to give first aid to Tpr. De Groot. About 1510 hrs. an ambulance took Tpr De Groot away. On examining the tent, I saw a hole in the tent wall and found a spent bullet in a large pack on the floor. I also found two spent cartridge casings. I reported this information to the squadron orderly room.

The accused declines to question the witness

Wm Ambrose.
LIEUT. W. AMBROSE (CACTU)

Second Witness

B132736 Tpr DESILEST, B.W.

B132736 Tpr DESILEST, B.W., having been duly sworn, states:

I am B132736, Tpr. Desilest, B.W. I the assault troop of the Recce Sqdn, C.A.C.T.U. On 20 May 44, after 1330 hrs parade, our troop was ordered to draw weapons and ammunition from stores, and clean the weapons in preparation for firing the following day. I drew a Bren gun and magazines and ammunition, and went to my tent to clean my weapon. Tpr. Farrell and Tpr De Groot were also cleaning weapons in the tent. At about 1445 hrs, I was sitting with my back toward the other two, when I heard two shots in the tent. I jumped up, turned around, and saw Tpr De Groot fall on his side. Tpr Farrell was standing by the middle pole and his T.S.M.G. was on the ground. Tpr. Farrell told me to get the medical Officer. I ran out of the tent, and met Lieut. Lemoine on my way. He told me to proceed and get the M.O. I went to the M.T.P. and asked for the M.O. He wasn't there, so I told the orderly that a man had been shot. He told me to get our medical sgt. I went to the sgts. tent, but he was already at the scene of the accident. I returned to my tent to do what I could. The ambulance came a few minutes later and took Tpr. De Groot away.

The accused declines to question the witness.

A M Desilest
B132736 Tpr DESILEST, B.W.

THIRD WITNESS

C125335 Sgt. CASEY, T.A. (R.C.A.M.C.)

C 125 35 Sgt. CASEY, T.A., having been duly sworn, states:

I am C 125 35 Sgt. CASEY, T.A. (RCAMC), medical sgt. at C.A.C.T.U. On about 1715 hrs. 25 May 44, I was sitting in my tent, when I heard what sounded like a shot. A trooper came running through the lines and said that a man had been shot. I picked up shell dressings and proceeded to a tent around which several men were standing. I entered the tent and found Tpr. De Groot lying on the ground, groaning. I examined him and found bullet wound in chest and back. I applied dressings, placed him on a stretcher, and put him in the ambulance. I took him the Polish camp to be examined by the M.O. there. He ordered me to take him to No. 1 Con. Em. Hospital. I did so, and turned the patient over to the hospital.

The accused declines to question the witness.

Sgt T.A. Casey C125-35

C125 35 Sgt Casey, T.A.

FOURTH WITNESS

H1615 Tpr. DeGROOT, A.

In my opinion, the attendance of this witness is not procurable, owing to the fact that he is in No. 1 Con. Sec. Hospital. A written statement of his evidence, purporting to be signed by him, has been read to the accused and is therefore included in this summary.

R.P. 4 (c)(d)(e) are therefore dispensed with.

(R.P. 4 (6)(6)(i.)

Statement of H1615 Tpr. DeGROOT, A.

I am H1615 Tpr DeGROOT, A. of C.A.C.T.U. On the afternoon of 25th May 44, the assault troop, under command of Lieut. W. Ambrose, were ordered, by him, to draw their weapons from the pool. I drew my rifle and Tpr. Farrell drew his T.S.M.G. We proceeded to our tents to clean them for firing the next day. I was sitting on the floor cleaning my rifle and a gun went off and I was shot by a T.S.M.G. in the hands of Tpr. Farrell.

H1615 Tpr DeGROOT, A.

Certified true copy.

A.C. Lucas Capt.

The accused, having been cautioned as under R.P. 4(c) elects to give evidence on oath.

F33102 Tpr FARRELL, P.A.

The accused, having been duly sworn, states:-

I am F33102, Tpr FARRELL, P.A. of C.M.C.T.U. On the afternoon of 25 May 44, I was ordered by my troop officer, Lieut. W. Ambrose, to draw my T.S.M.G. from store and clean it for firing the next day. I drew it and went back to my tent and started to clean it. There was some ammunition in one of the magazines I had drawn. Tpr. De Groot and Tpr Dunbar were also cleaning their weapons in the tent. After I had cleaned my weapon, I picked up a magazine and tried to fit it on the gun. I did not notice that the gun was cocked. The magazine seemed to stick, so I tapped it with my hand to get it home. The gun fired two shots. I saw that Tpr. De Groot had been hit. I laid the gun down and told Tpr Dunbar to get the M.O. Tpr De Groot had fallen on his side. Lieut Ambrose came in and then the medical sgt. He applied first aid and then Tpr De Groot was taken away in an ambulance. I told Lieut. Ambrose what had happened.

Tpr P. A Farrell.
F33102 Tpr FARRELL, P.A.

I certify that R.P. 4 (c) (b) (c) were complied with.

J.A. Reid Capt.

Taken before me this 31st day of May 1944

J.A. Reid Capt.

PART IV

STATEMENT OF INJURED PERSON:

(Short statement by injured person of the circumstances of the injury. Signed statements of witnesses, or of persons to whom the injured person may have mentioned his injury, to be attached.)

I am H.1615, Tpr. de Groot, A. of C.A.C.T.U. On the afternoon of 25 May 44, the assault troop, under command of Lieut. W. Ambrose were ordered by him to draw their weapons from the pool. I drew my rifle and Tpr. P.A. Farrell drew his Thompson Sub Machine Gun - we proceeded to our tents to clean them for firing the next day. I was sitting on the floor cleaning my rifle and a gun report went off and I was shot by a Thompson Sub Machine Gun in the hands of Tpr. P.A. Farrell.

Tpr H de Groot

H.1615 Tpr. de Groot, A.

REPORT ON WOUNDS OR OTHER INJURIES, EXCEPT ON WOUNDS RECEIVED IN ACTION

(Refer to Overseas R.O. 2022)

PART I

No. H 1615 Rank Tpr Name De Groot A.

Unit C.A.C.T.U. X-4 List "E" was reported on the 25 th May 19 44

suffering from G.S.W.

The disability is of a Severe nature, and in all probability will interfere with his future efficiency as a soldier.

He Claims (Here insert "claims" or "does not claim") that he was in the performance of military duty at the time of the accident.

(If the soldier makes no claim that he was on duty at the time the certificate below (Part II) should be signed by him.)

STATION N.Z.C.C. Hospital

DATE 25/5/44 J. M. Brown Lt-Col
Medical Officer in charge.

PART II CERTIFICATE TO BE SIGNED BY SOLDIER

I, ... hereby declare that the injury sustained by me on the ..... DID NOT occur while I was in the performance of military duty.

..... Soldier's Signature

STATION .....

DATE ..... Signature of Medical Officer

PART III

STATEMENT OF COMMANDING OFFICER:

(a) Was the individual in the performance of military duty? YES

(b) Nature of duty? CLEANING T.S.M.G. IN PREPARATION FOR FIRING

(c) Was it incurred in a game or other form of physical recreation organized with the approval of unit commander? NO

(d) If it was incurred on leave, was such leave with or without pay? N/A

(e) Was anyone to blame? YES

Whom? P 33102 Tpr FARRELL P.A. - C.A.C.T.U. X-4 List "E"

(f) Did the injury occur on military premises and if so what part of such premises? YES. TENT

(g) Court of Inquiry (See Overseas R.O. 2022, paragraph 9).

(i) Has one been held? When? NO

(ii) Will one be held? When? YES 26 May 44

(h) Disciplinary action taken (if any required) or other remarks Remanded for F.C.C.M.

C. E. Dunlop Major

Date 26 May 44 Comd. C.A.C. TRAINING UNIT

M.F. Ball
40/P & S 683 (3012)

See Part IV Overleaf

Exhibit G

In lieu of Army Form B. 296

Statement as to Character and Particulars of Service of Accused

Number	Rank	Name	Regiment
F.33102	Trooper	FARRELL, Patrick Alex	C. A. C. Trng. Unit.

1. The following is a fair and true summary of the entries in the regimental and squadron, battery or company conduct sheets of the accused, exclusive of convictions by a Court Martial or a civil court, of summary awards under section 47 of the Army Act, and of cases in which trial has been disposed with

	# Within last 12 months.	# Since enlistment
For [illegible]	times	times
For [illegible]	times	times
For [illegible]	times	times
For A.A. Sec 15 (1)	1 times	1 times

~~Number of instances of gallantry or distinguished conduct.~~

or

~~There are no entries in the conduct sheets of the accused.~~

2. ~~The accused has not been previously convicted, or~~ Previous convictions of the accused by a court martial or a civil court, summary awards under section 47 of the Army Act, and dispensations with trial under section 73 of the Army Act, are set out in the schedule annexed to this statement.

3. The accused is not under sentence at the present time, or; ~~The accused at the present time is under sentence for _____ beginning on the _____ day of _____.~~

4. The accused has been in confinement, awaiting trial on the present charges, for ~~_____ days in civil custody, and~~ N/A days in military custody, making a total of N/A days, ~~of which _____ days were spent in hospital.~~

5. The present age of the accused according to his ~~record of service~~ attestation paper is 21 years and 4 months.

6. The date of his ~~commission~~ attestation specified in his ~~record of service~~ attestation paper is 19 February, 43.

7. The service which the accused is allowed to reckon towards discharge or transfer to the reserve is 1 (one) year and 4 (four) months.

8. The accused is entitled to ~~deferred~~ pay or gratuity in respect of 1(one) year and 4 (four)mos.service.

9. The accused is entitled to reckon 1(one) year and 4(four)months service for the purpose of determining his pension, etc.

10. The accused is in possession of, or entitled to, no military decoration or military award (~~or is in possession of or entitled to _____~~).
(~~State any military decoration or award.~~)

11. (If the accued is a warrant officer) The accused before he was made a warrant officer, last held the rank of N/A.

12. (In the case of an officer) The accused holds in the army, the rank of N/A dated N/A and in his regiment (or corps or department) the rank of N/A dated _____.

Schedule of Convictions by a Court Martial or Civil Court, of summary awards under Section 47 of the Army Act and of cases in which trial has been dispensed with of accused.

Number F.33102 Rank Trooper Name FARRELL, Patrick Alex of C. A. C. Trng. Unit Regiment (or as the case may be.)

(INSTRUCTION - A verbatim extract from the regimental books, stating these convictions or dispensations with trial, must be inserted.)

Description of court by which tried or status of officer disposing of the charge or dispensing with trial.	Date and place of trial, or summary award under AA47 or of order dispensing with trial	Charges upon which convicted, or in respect of which trial was dispensed with.	Sentence of the court or authority disposing of the charge, or order of the dispensing authority.	Punishment remitted.
~~Summary Authority Officer Commanding, [illegible] RD.~~	~~[illegible] April, 1944. Field~~	~~[illegible] absenting himself without leave at [illegible] on [illegible] (12 hours) [illegible] Section 15(1).~~ Non-Applicable	~~[illegible] [illegible] Section 15(1)~~	~~Nil~~

I HEREBY CERTIFY that the foregoing schedule of convictions and dispensations with trial is a true extract from the regimental books in my custody.

Signed this 3 July day of July 1944.

13. The accused has served as a non-commissioned officer continuously, without reduction, to the present date.

	Date of promotion			
In the rank of	N/A,	years,	N/A	
In the rank of	N/A,	years,	N/A	
In the rank of	N/A,	years,	N/A	

(Instructions:- If any matter in any of the above paragraphs cannot be stated from the regimental books, the paragraph must be struck through, except that in the case of a trial by Field General Court-Martial, the information may be collected from such sources as are available and the paragraphs concerned amended accordingly.)

PART IV

STATEMENT OF INJURED PERSON:

(Short statement by injured person of the circumstances of the injury. Signed statements of witnesses, or of persons to whom the injured person may have mentioned his injury, to be attached.)

N.L.B.

I am N.L615, Tpr. de Groot, A. of C.A.C.T.U. On the afternoon of 25 May 44, the assault troop, under command of Lieut. W. Ambrose were ordered by him to draw their weapons from the pool. I drew my rifle and Tpr. P.A. Farrell drew his Thompson Sub Machine Gun - we proceeded to our tents to clean them for firing the next day. I was sitting on the floor cleaning my rifle and a gun report went off and I was shot by a Thompson Sub Machine Gun in the hands of Tpr. P.A. Farrell.

The A de Groot

N.1615 Tpr. de Groot, A.

REPORT ON WOUNDS OR OTHER INJURIES, EXCEPT ON WOUNDS RECEIVED IN ACTION

(Refer to Overseas R.O. 2022)

PART I

No. H 1615 Rank TPR Name De Groot A.

Unit C.A.C.T.U. X-4 List "E" was reported on the 25 th May 19 44

suffering from G.S.W.

The disability is of a Severe nature, and in all probability will interfere with his future efficiency as a soldier.

He Claims that he was in the performance of military duty at the time of the accident.
(Here insert "claims" or "does not claim")
(If the soldier makes no claim that he was on duty at the time the certificate below (Part II) should be signed by him.)

STATION N.Z.C.G.H.

DATE 26/5/44

Medical Officer in charge.

PART II CERTIFICATE TO BE SIGNED BY SOLDIER

I, ... hereby declare that the injury sustained by me on the ..... DID NOT occur while I was in the performance of military duty.

..... Soldier's Signature

STATION ..... Signature of Medical Officer

DATE .....

PART III

STATEMENT OF COMMANDING OFFICER:

(a) Was the individual in the performance of military duty? YES

(b) Nature of duty? CLEANING T.S.M.G. IN PREPARATION FOR FIRING

(c) Was it incurred in a game or other form of physical recreation organized with the approval of unit commander? NO

(d) If it was incurred on leave, was such leave with or without pay? N/A

(e) Was anyone to blame? YES

Whom? F 33102 Tpr FARREL P.A. - C.A.C.T.U. X-4 List "E"

(f) Did the injury occur on military premises and if so what part of such premises? YES. TENT

(g) Court of Inquiry (See Overseas R.O. 2022, paragraph 9).

(i) Has one been held? When? NO

(ii) Will one be held? When? YES 26 May 44

(h) Disciplinary action taken (if any required) or other remarks F.C.C.M. Remanded for

Lt Col Dunlop Major

C.A.C. TRAINING UNIT

Date 26 May 44 Comd.

See Part IV Overleaf

M.F. 8 ....
40/P.R.O. 883 (2012)

No F. 33102 Name FARRELL P.A. Sqn, Battery, or Company C.A.C Coast Depot CA

Date of last entry in Company Conduct Sheet | No and date of last drunk | Period not reckoning towards freedom from extra fine | Date of enlistment 19.2.43 | GC Badges | Service or Proficiency Pay | Sheet No | Signature OC Company, etc (Lt) ??? | Character

MFM 6 (APB 122) 40/P&S/136 (3428)

Place	Date of offence	Rank	Cases of drunkenness	OFFENCE	Names of Witnesses	Punishment awarded	Date of award or of order dispensing with trial	By whom awarded	Remarks
~~Coast Area~~ Field	4.1.44			Volunteers Blood Donor. deleted 5 Nov 43 (Lt) ??? Asst				(Lt) ??? Asst	
Field	29.2.44 to 1.3.44	Pte		W.O.A.S. absenting himself without leave at 5 Bn C.A.R.D from 2145 hrs 29 Feb 44 till 1400 hrs 30 Feb 44 (B hrs 55 mins) A.A Sec 15 (1) Exhibit "H"	B.139460 Cpl Coffey D.E.	Forf 7 days Pay under FA & I (49(3)	1 Mar 44	Lt Col J.A. Timms	Forf 1 days Pay FR & I 1949(6) W.F.

Thos Cain Lt Pres.

Certified true extract from Regt'l books. Capt & Adjt Regt RE Asmt 5/6/44

D/O Regt'l Judge Advocate

(PTO)

LIST OF WITNESSES

Witnesses in the case of F33102 Tpr.

Farrell P.A. CAC Trg. Unit Cdn Army

C.M.F.

Lieut. W. Ambrose

B132737 Tpr. Desilest B.M.

C12535 Sgt. Casey T.A. (R.C.A.M.C.)

H1815 Tpr. DeGroot A.

Stenographer

RECEIPT FOR SUMMARY OF EVIDENCE

I,

F33102 Tpr. Farrell P.A.

hereby acknowledge receipt of a true copy of the Charge Sheet and Summary of Evidence in connection with the Charges pending against me.

In the Field

In Italy

21 June 44

P.A. Farrell.

F33102 Tpr. Farrell P.A.

Witnessed by:

(S.A. Nicol) Captain

I, F 33102 Tpr Farrel, P.A., request. that. in the event of a Court Martial being held, Lieut. A.E. Armstrong, C.A.C. be appointed to defend me.

P.A. Farrell.
F 33102 Tpr Farrel, P.A.

Witnessed: S.A. Nicol, Capt.

H.Q.C. 55-F-872 CONFIDENTIAL

DEPARTMENT OF NATIONAL DEFENCE—OTTAWA, CANADA

SUBJECT

FIELD GENERAL COURT-MARTIAL

FARRELL, C.E. G-18046 CPL.

CENTRAL REGISTRY	DATE	R.A. OR B.F.	INITIALS	REFERRED TO	FOR	INITIALS	DATE
				(If purpose for which referred cannot be expressed on one line, enter here "With Minute")			2-12-46

CONFIDENTIAL
H.Q.C. 55-F-872

OVERSEAS COMBINED

NOTICE

1. Files should be retained no longer than absolutely necessary. If a file is frequently needed at short intervals, it is better to B.F. it for two or three days than keep it out of Central Registry indefinitely. This ensures it being completed and kept in order, and also gives other officers an opportunity to see papers.

2. Files and papers should be passed by messenger or B.F. to outside directs to another branch.

PASS THIS FILE IN ENVELOPE

Correspondence to be PINNED here.

Army Form A.3.

Form for Assembly and Proceedings of Field General Court Martial on Active Service.

PROCEEDINGS.

A.
Order convening the Court.

On Active Service, this 23 rd day of September, 1941.

Whereas it appears to me, the undersigned, an officer in Command of 3 Cdn Inf Bde, on active service, that the persons named in the annexed Schedule, being subject to Military Law, have committed the offences in the said Schedule mentioned.

And whereas I am of opinion that it is not practicable that such offences should be tried by an ordinary General Court Martial; *~~and that it is not practicable to delay the trial for reference to a superior qualified officer;~~

* Omit where Convening Officer is a Commanding Officer or is of Field Rank.

I hereby convene a Field General Court Martial to try the said persons, and to consist of the Officers hereunder named.

* Omit if not applicable.

*~~I am unable to appoint~~
*~~(1. Three Officers to form the Court.)~~
*~~(2. A Field Officer as President.)~~
*~~(3. Three Officers having more than one year's service.)~~

for the following reasons, namely:—]

PROCEEDINGS REVIEWED

3/11/41

President.

Rank.	Name.	Regiment.
Major	G.A. Turcot	R 22e R

Members.

Rank.	Name.	Regiment.
Capt	G.F. Johnston	West NSR
Lieut	R.C. Thexton	West NSR
Capt	J.A.A.G. Vallee	R 22e R

* Must be signed personally by the Officer actually in command at the time, and all alterations in the composition of the Court to be initialled by him.

*Signed [signature] Brigadier
Commanding 3 Cdn Inf Bde
Convening Officer.

SCHEDULE.

Number, Rank (*a*), Name and Unit of Accused (*b*)	Offence charged	*Plea	Finding, and if Convicted, Sentence (*c*)	How dealt with by Confirming Officer (*d*)
G.18046 Cpl Farrell, C.E. Carlt & York R	1st Charge Sec 15(1) A.A.	Guilty	Guilty	
	second charge Sec 15 (3)	Guilty	Guilty	
	Thirdd Charge Sec 11 A.A.	Guilty	Guilty	
	Fourth Charge Sec 25 (1) (a)A.A.	NOT Guilty	NOT Guilty	
			Reduced to the rank of Pte	
			28 days detention.	

* Question to be asked of accused, if he pleads not guilty (R. of P. 39 (a)):—
"Do you wish to apply for an adjournment on the ground that any of the rules relating to procedure before trial have not been complied with, and that you have been prejudiced thereby, or on the ground that you have not had sufficient opportunity for preparing your defence?"
Answer (*to be recorded on separate sheet if necessary*):— YES. Adjourned until 14 o'clock 25/9/41

(Signed) W.H. Jansen Brigadier (Signed) G.B. Farrell Major
Commanding 3 Cdn Inf Bde *Convening Officer* (*e*) Regt 22e Regt *President.*

(*a*) Appointment acting rank or acting appointment, if any, to be stated in brackets after the substantive rank.
(*b*) Unless unavoidable, not more than three names are to be entered on one form, and in serious cases one only.
(*c*) Recommendation to mercy, if any, to be inserted in this column.
(*d*) It is not necessary that the Confirming Officer should sign his name in this column. Initials are sufficient.
(*e*) Must be signed by the same Officer who signs on the first page, and all alterations in the first two columns of the Schedule to be initialled by him.

Evidence and Charge Sheets (if necessary) to be PINNED here.

B. Certificate of President as to proceedings.

I certify that the above Court assembled on the 25th day of September 1941, and duly tried the persons named in the Schedule, and that the plea, finding, and sentence in the case of each such person were as stated in the third and fourth columns of that Schedule.

I also certify that :—
1. The members of the Court
2. The witnesses
*(3. ~~The interpreter~~)
*(4. ~~The officers under instruction~~)
were duly sworn.

* Omit if not applicable.

Signed this 25th day of September 1941.

G.B. Farrell Major
President of the Court Martial.

C. Certificate in case of death sentences.

* See footnote (*b*) on page 762 M.M.L. 1929.

I certify that the terms of *A.C.I. 570 of 1918 have been complied with.

Signed this day of 19 .

President of the Court Martial.

D. Confirmation

I have dealt with the findings and sentences in the manner stated in the last column of the Schedule, and, subject to what I have there stated, I hereby confirm the above findings and sentences.

*~~(I direct that the soldier named in the margin be not committed to prison until further orders.)~~

* To be omitted unless penal servitude or imprisonment having been awarded, the Confirming Officer either has no authority to commit to prison, or, having such authority, recommends suspension.

Signed this 11th day of October 1941.

W.H. Jansen Brigadier
Comd 3 Cdn Inf Bde *Confirming Officer.*

Promulgated and extracts taken in the case of G 18046 Cpl. Farrell, C.E.

(*a*) (Dated) 12 Oct 41 (Signed) W.H. Lawson Lt Col

Promulgated and extracts taken in the case of

(Dated) (Signed)

Promulgated and extracts taken in the case of

(Dated) (Signed)

(*a*) When several cases are promulgated in one unit on the same day the Officer need only sign once.

(41739) Wt. 46225—893 500 M. 1/40 P. St. G. 600

CHARGE SHEET

The Accused G18046 Cpl. Farrell, C.E., Carlt. & York Regiment, Canadian Army (Overseas) is charged with;

First Charge
Sect. 15 (1) A.A.

Absenting himself without leave

In that he

At Caterham, Surrey, did absent himself without leave from 2215 hrs 8 Sept. 41 until 0035 hrs 9 Sept. 41

Second Charge
Sect. 15 (3) A.A.

When in camp being found beyond the limits fixed by Regimental orders without a pass from his Commanding Officer

In that he

when billetted at Caterham, Surrey, was found in Streatham, Surrey, at 2315 hrs, a place outside Battalion area when Battalion was on one hours notice ordered in Regimental order No. 1244 dated 7 Sept. 41 without a pass from his Commanding officer.

Third Charge
Sect. 11 A.A.

Neglecting to obey Regimental Orders

In that he

At Streatham, Surrey on 9th Sept. 41 was carrying on his person two bottles of beer contrary to Regimental Standing Orders of 1939 of 1940, directing that disciplinary action will be taken in all cases where intoxicants are carried on the person or otherwise found in possession of soldiers

Fourth Charge
Sect. 25 (1)(a)

In a tattoo roll call report of the contents of which it was his duty to ascertain the accuracy, being privy to the making of a false statement

In that he

At Caterham , Surrey, on 8th Sept. 41 when acting as duty N. C.O. of No 8 platoon, "A" Coy. Carlt. & York Regt., in a tattoo roll call report of the said platoon for the 8 Sept. 41, the contents of which it was his duty to ascertain the accuracy, caused G18043 Pte Parker D.W., a soldier of the Carlt. & York Regt. to make and sign, his, Cpl. Farrell's name, to a report showing that he, Cpl. Farrell C.E., was present at the time of and had made such roll call report when in fact he was not present

Date 14 Sept. 41

Lt-Col.
Lt-Col. W.C. Lawson
Commanding Carlt. & York R.

FORM A

Proceedings of a Field General Court Martial held AT THE FIELD ON THE 25th DAY OF Sept 1941

Trial No. G 18046 C.N. Farrell C.E.
Carlts Yorks Regt

Prosecutor: Lieut A.J. Blakeney

Defending Officer: Lieut D.H. Cunningham

Officer Under Instruction: NIL

1. The order convening the Court is read in the presence of the accused.

2. The accused is asked the following question:-

Do you object to being tried by the President or any Member of the Court, whose names you have heard read over?

Answer - NO

3. The President, Members, Judge Advocate, officers under instruction, shorthand writer, and interpreter are duly sworn.

4. (a) The accused having pleaded guilty to three of the four charge(s) A.F.A.25 (2) is complied with.

5. The accused is asked the question at the foot of page 2 of A.F.A. 8, and his answer is recorded beneath the question.

6. The Prosecutor makes ~~no~~ (the following) opening

A.J. Blakeney Lieut

CASE OF G.18046 Cpl. FARRELL C.E. OF THE CARLETON AND YORK REGT.

First witness for prosecution, G.20050 C.Q.M.S. Riley, H.A.-:
" On the 8th Sept 41 the tattoo roll call came in at approximately 2215 hrs at the company Orderly Room with Cpl. Farrell's name on it and no absentees."
No questions were asked this witness.

Second witness for the prosecution, G.18071 Pte. Storey, C.W.-:
(The defending officer has no objection to the prosecution bringing in this witness). "Cpl. Farrell asked Pte. Parker to call the roll and send in a "NIL" report and that he would take all responsibilities."
Questioned by prosecution:-
Q.1 The only part of the conversation overheard by the witness was Cpl. Farrell asking Pte. Parker to take tattoo roll call and that Cpl. Farrell would take all responsibility?
A.1 That was all I heard, sir.
Questioned by Defence-
Q.1 Do you know what Cpl. Farrell and Pte. Parker conversed about after the statement by Cpl. Farrell "I will take all responsibility"?.
A.1 No, sir, I left them.
Questioned by Court-
Q.1 Where did you hear Cpl. Farrell make these statements?
A.1 In a pub.
Q.2 Did Cpl. Farrell look serious?
A.2 I didn't take much notice.
Questioned by Prosecution-
Q.2 Was Cpl. Farrell under the influence of liquor?
A.2 Not in my estimation.
Q.3 He was drinking.
A.3 A glass of beer I think.

Third witness for the prosecution G.18043 Pte. Parker, D.W.-:
"On the evening of Sept. 8th 41 I saw Cpl. Farrell, he asked me to see Cpl. Arnold who was Orderly Sergeant of "A" coy. and ask him to call the roll at tattoo, and if he refused I was to make it out and sign his name and that he would take the responsibility."
Questioned by Defence.
Q.1 Did you see Cpl. Arnold?
A.1 Yes.
Q.2 What did you say to Cpl. Arnold?
A.2 I asked him to call the roll at tattoo and make out the report, but he refused because it was not his job.
Q.3 What make you think that Cpl. Farrell was serious?
A.3 I had no cause to think that he was not.
Q.4 Did Cpl. Farrell say anything after that?
A.4 Nothing to do with his previous requests.
Q.5 Are you sure that the order to see Cpl. Arnold first and then make out the tattoo report is correct?
A.5 Yes s ir.
Questioned by the Court-
Q.1 Was there a roll call every night?
A.1 As far as I know, sir.
Q.2 Were N.C.O's detailed as duty N.C.O's in the platoon for calling the roll?
A.2 I do not know, sir.

Witness for the defense, G.18046 Cpl. Farrell, E.;

"On 8th Sept 41 I met Pte. Parker in the Valley Hotel. I asked him if he was coming in early; he said he was and so I asked him to see whoever called the roll and tall him that I would be late. He asked who was calling the roll, I did not know but I asked him if there were no N.C.Os in and I was not in in time to call the roll, to call it him self and I would be in to check it. He did not want to do this. Just before I left I asked him that if there were no N.C.O's in and I was not in in time, to see Cpl. Arnold and have him see about tattoo roll call. I did not know that Pte. Parker had turned in a tattoo report until next day."

Questioned by defense-

Q.1 When Pte. Parker left you, did you think he was going to make out a tattoo report?
A.1 He had refused.
Q.2 Did you know that Cpl. Arnold was in?
A.2 Yes, he was company duty Sergeant.
Q.3 Cpl. Arnold is in the same platoon as you?
A.3 Yes.

Questioned by prosecution-

Q.1 Did you ask Pte. Parker to sign your name to the report?
A.1 Yes, sir.
Q.2 Did you intend to be back in time for roll call?
A.2 Yes sir.

Questioned by the Court-

Q.1 Were you told by anyone that you were duty N.C.O. for your platoon?
A.1 No, sir.
Q.2 Why then did you bother about the roll call?
A.2 Pte. Parker had mentioned that he did not think there was anyone in.
Q.3 Were there no orders posted in Company or platoon headquarters to say who would be on duty at night?
A.3 No sir.
Q.4 Who were you responsible to give the roll call report to?
A.4 The duty N.C.O.

G.R. Turnbull Major

G-18046 Gnl Farrell, C.E.

I have examined the m/n and found him fit to be tried by Court Martial.

Offender "A"

G.A. Turner Major

A. Maclean Capt.

DEFENCE

The accused is informed of his rights in accordance with R.P. 40 (4) and note 2 of page 644 of the Manuel of Military Law, 1929 edition.

The accused is asked the following questions:-

Q.1. Do you wish to give evidence as a witness?

A.1. YES

Q.2. Do you intend to call any other witnesses on your behalf?

A.2. NO

Q.3. Are they witnesses as to character only?

A.3. NIL

H.A. Durant Adjutant

FORM C PAGE

After finding:

Lieut A.J. Oldsberg is sworn and states:-

I produce a certified true copy of A.F.B.122 relating to the accused. (The said copy is marked A/1/B" signed by the President, and attached to the Proceedings).

Question to the accused:

1 Do you wish to address the Court, or to call evidence as to character?

Answer NO

The (Accused) (Defending Officer) makes the following plea in mitigation of sentence:- G.O. Jones Adjutant

No. G18046 Name Farrell, C | Sqn., Battery, or Company | C.Y.R Corps | Date of enlistment | 2-9-39 | G.C. Badges | | Service or Proficiency Pay | | M.F.M. 6 (A.F.B. 122) 5001M—8-39 (1703) H.Q. 1771-45-18

Date of last entry in Company Conduct Sheet | | No. and date of last drunk | | Period not reckoning towards freedom from extra fine | | Sheet No. 2. | Signature O.C. Company, etc.) | | Character

Place	Date of offence	Rank	Cases of drunkenness	OFFENCE	Names of Witnesses	Punishment awarded	Date of award or of order dispensing with trial	By whom awarded	Remarks
CATERHAM	16 DEC 40	L/BDT		WOAS A/WL 1230 HRS 15 DEC 40 TILL 1900 HRS 16 DEC 40	SGT ENGLAND WM	FORFEITS LANCE RANK	19-12-40	H.N. GRANGE LT. COL.	
THIS MAN HAVING COMPLETED ONE YEARS SERVICE AND IN ACCORDANCE WITH KR 319 CASE (a) THE ABOVE ENTRY WAS TRANSFERRED FROM TROOPERS SHEET WHICH WAS DESTROYED 1 MAR 41									

Appendix "B"
W.A. Burns Lt Hayes

Certified true copy of AFM 6
J.H. Farthing Lieut
for Capt C.E. Wynn Adjt
Carlton & York R

(P.T.O.)

SHORT STATEMENT AS TO PARTICULARS OF
SERVICE OF THE ACCUSED.

C18046 Cpl. Farrell, C.E. — Carleton & York Reg't

(a) The accused has been in confinement awaiting trial on the present charges for ....Nil..... days in Civil Custody and ....Nil..... days in military custody making a total of ....Nil..... days of which .....Nil..... were spent in hospital.

(b) The present age of the accused according to his own statement is ...twenty four.....

(c) The date of his attestation specified in his attestation papers is ...8-9-39.....

(d) The accused is in possession of, or entitled to no military decoration or military reward (or is in possession of or entitled to

I hereby certify that the foregoing particulars are true extracts from the Regimental Books in my custody.

Appendix "C"
G.A. General Hollis

G E Wrynn capt adjt

Summary of evidence in the case of G18046 Cpl. Farrell, C. E Carleton & York Regiment.

The summary of evidence is taken by the direction of the Commanding Officer.

1st Witness for Prosecution

G18043 Pte. Parker, D.W. #8 Platoon, Carleton & York Regiment having been duly sworn states:-

On 8 Sept. 41 Cpl. Farrell, C.E. told me he might not be in until after tatoo roll call and asked me to get Cpl. Arnold to call the roll, and if Cpl. Arnold would not do so, he, Cpl. Farrell, C.E. requested me to call the tatoo roll, make out a nil report, sign his, Cpl. Farrell's name to it and turn it in to C.Q.M.S. Riley, the company duty N.C.O. At 2215 hrs I called the tatoo roll call and found that everyone was in except Cpl. Farrell, so I made out a nil report, signed Cpl. Farrell's name to it and took it to the company duty N.C.O. C.Q.M.S. Reilly, as requested by Cpl. Farrell.

[redacted]

Accused declines to cross-examine this witness.

D W Parker.

2nd Witness for Prosecution.

G20050 C.Q.M.S. Reilly, H.A. Carleton & York Regiment having been duly sworn states:-

On 8 Sept. 41. I was company duty N.C.O. On the same date Cpl. Farrell was duty N.C.O. of # 8 Platoon. At approximately 2215 hrs the tatoo report for No. 8 platoon was brought to me by Pte. Parker, showing the absentees as Nil The report had Cpl. Farrell's name signed to it.

Accused declines to cross-examine this witness.

H A Reilly

3rd Witness for Prosecution

Due to exigencies of the Service, John Leslie Emed, Stratham Police, is unable to attend. The following statement purported to be signed by him is read in the hearing and presence of the accused.

On 8th Sept. 1941 at 1115 p.m. in Stratham High Rd. Junction of Greyhound Lane I heard a collission between a tramcar, Army car and a soldier who was crossing the road. I went to the scene where I saw a corporal sitting on the pavement. I saw Lieutenant Stevenson approach the soldier and interrogate him. I then left him and took particulars of the tramcar. I then heard a souffle and saw the corporal running away followed by the officer.

At 1245 a.m. on the 9th of September at Streatham Police Station I saw Corporal Clinton Edward Farrell (No. G 18046) A Company, Carleton & Yorks Regiment, Caterham detained and I recognised him as being the man concerned in the above incident. Approxat1120 I saw Corporal Farrell sitting on the pavement and noticed he had at least two bottles of beer on his person.

4th Witness for Prosecution

Due to the exigencies of the service, Lieut. E.H. Stevenson, No. 1 Provo. Coy. (RCMP) is unable to attend. The following statement purported to be signed by him is read in the hearing and presence of the accused.

At 2315 hrs 8 Sept. 41 whilst on Provost Duties as Orderly Officer at the junction of Streatham High Rd. and Greyhound Lane I was proceeding in Ford Sedan W.D. No. CM4202332. After stopping for a red traffic light my driver had just started, and was in the act of passing a street car proceeding in the same direction when the within mention soldier lurched from in front of the street car to the left hand side of the road. Due to the street car my driver, L/C Hayes, E.J. was unable to see the soldier until he was directly in front of my car. In an attempt to avoid him we were run into by the street car. I endeavoured to obtain the soldier's particulars, but while taling to him he evaded me and ran away. He was later arrested by the Streatham Police at 0035 hrs 9 Sept. 41. He was identified as being the soldier concerned in the accident by W.R. C. J.L. Edmed, Streatham Police, whose statement is attached hereto. He was escorted to this Unit H.Q. where he was detained. I identify Gi8046 Cpl. Farrell, C.E. as being the soldier concerned in the acc. He was not in possession of pass and at the time of arrest was carrying four bottles of beer on his person.

5th Witness for Prosecution.

Due to the exigencies of the service, D98553 L/C.E.J. Hayes No. 1 Provo Coy. (RCMP) is unable to attend. The above evidence by Lieut. E.H. Stevenson is also signed by L/C .E.J. Hayes, No. 1 Provo Coy.

6th Witness for Prosecution

Due to the exigencies of the service P.C. 600 'Z' John Plain is unable to attend. The following statement purported to be signed by him is read in the hearing and presence of the accused.

Streatham Station 'Z' Division 18 September 1941.

On 8th September at 11-30 pm I received information from P.C. Edmed 560 'Z' W/R that a corporal of the Canadian Army, who was under the influence of drink and had previously been the cause of an accident at Streatham High Road, junction of Greyhound Lane, had assaulted and escaped from a Lieutenant of the Canadian Provost Corps. I searched the vicinity and at 1235 a.m. on 9th September 41 at Streatham High Road found Corporal Clinton Edward Farrell, No. G18046 of A Company, Carlton & York Regt, Canadian Army Overseas, Caterham. I said to him have you been concerned in an accident tonight, he replied "No, I don't remember one"I was not satisfied with the answer and as he answered the description of the wanted man I detained him and took him to Streatham Police station, where he was subsequently recognized by P.C. W/R 560'Z' Edmed and was detained for Military escort.

1st Witness for Defence

The accused G18046 Cpl. Farrell, C.E. Carleton & York Regiment elects to make a statement.

I am guilty of the three charges as laid. If at all possible, I wish to be tried by my Commanding Officer, as I do not want a Court Martial.

C.E. Farrell

Certified that Rules of Procedure 4 (C)(D)(E)(F) have been complied with.

Taken down by me in the presence of the accused the 10th day of Sept. 41. in the Field.

G. J. Foster Lieut

G. A. Turner Adjt

List of Witnesses in the case of O18046 Cpl. Farrell, C.E. Carl ton & York Regiment.

For the Prosecution.

G18043 Pte. Parker, D.W.	Carleton & York Regiment	In the Field.
G20050 C.Q.M.S. Reilly, H.A.	do	do
John Lewis Edmed	Streatham Police	Streatham
Lieut. E.H. Stevenson	No. 1 Prov. Coy (RCMP)	In the Field.
D98553 L/Cpl. E.J. Hayes	do	do
John Plain	Streatham Police	Streatham

For the Defence.

O18046 Cpl. Farrell, C.E.	Carleton & York Regiment	In the Field.

List of Exhibits.

Charge Sheet by Lieut. E.H. Stevenson, No. 1 Prov. Coy (R.C.M.P.)
Statement by John Lewis Edmed, Streatham Police.
Statement by John Plain, Streatham Police.
Copy of Part I Orders Dated 6 Sept. 41.
Copy of Part I Orders Dated 30 Dec. 41.

Defending Officer in the case of G18046 Cpl. Farrell, C.E. Carleton & York R.

I, G18046 Cpl. Farrell, C.E. Carleton & York Regiment request that

an officer be appointed to defend me if he is available.

Cpl. Farrell C.E.

G.A. Farrell Capt

H.Q.C. 55-F-873 CONFIDENTIAL [redacted]

DEPARTMENT OF NATIONAL DEFENCE — OTTAWA, CANADA

SUBJECT

FIELD GENERAL COURT-MARTIAL

FARRELL, BERNARD JOSEPH F-458[illegible]

CENTRAL REGISTRY	DATE	P.A. OR S.F.	INITIALS	REFERRED TO	FOR	INITIALS	DATE
				(If purpose for which referred should be expressed on one line enter here "With Minute")			2-12-46

CONFIDENTIAL
H.Q.C. 55-F-873

OVERSEAS COMBINED

NOTICE

1. Files should be retained no longer than absolutely necessary. If a file is frequently needed at short intervals, it is better to S.F. it for two or three days than keep it out of Central Registry indefinitely. This ensures it being completed and kept in order, and also gives other officers an opportunity at no point.
2. Central Registry should be notified whenever a file is passed direct to another branch.
3. No document should leave the office of origin.

PASS THIS FILE IN ENVELOPE

RECORDED AT CMHQ IN AB 168 5A-97

SCHEDULE.

PART I. PLEA(S), FINDING(S) AND SENTENCE.

Accused: F 45822 Pte Bernard Joseph FARRELL RCASC att 1 Cdn Dis Centre

Charge. (Insert "alternative" where applicable.)	Plea. (See Instrs p 2.)	Finding. (See note below.)	(Space for use as required for further charges, accused charged jointly, special findings, etc.)
1st AA 5 c c 40	Guilty	Guilty	
2nd			
3rd			
4th			
5th			
6th			

(Note: As to findings for lesser offences see AA 36, RP 44; findings on alternative charges see MML p 483 fn 4 para 2, RP 44; special findings see RP 44 and MML p 753, and in loss of kit see RP 44 fn 6.)

At present under sentence for N.A. beginning on (date) N.A. (1)

(1. Insert sentence being served, or delete, if not applicable. See RP 46(A). Information should be found on MF B355 or AF B296.)

Time in confinement awaiting present trial—a total of 34 days, of which NO days were spent in hospital.(1)

(1. See RP 46(A) fn 2. Information should be found on MF B355 or AF B296 admitted in evidence under E2.)

Sentence Awarded by the Court:

To undergo detention for one hundred and twenty (120) days.

(Sgd) ..... Judge-Advocate, if any. 13 Mar 45 Date awarded. (Sgd) W.H. Severman Major President. (RP 45, 50.)

(See back of Convening Order as to assembly and disposal of record after trial.)

PART II. MINUTE WHERE CONFIRMATION RESERVED. (AA 54(5), RP 120(F), MML p 760.)

Date ..... (Sgd) ..... Commanding .....

PART III. DECISION OF CONFIRMING OFFR ON FINDING(S) AND SENTENCE.

(For duties and powers see AA 54, 57, RP 37(D) fn 6, 46(A), 51-56, 120, MML pp 759-761, KR Can 567-577. Acquittals require no confirmation and cannot be revised: AA 54(3). Sending back finding or sentence for revision by Court: AA 54(2), RP 120(G). If not confirmed, accused may be tried again: AA 157, MML p 64. Minute of confirmation or non-confirmation may be altered before promulgation: RP 53, MML p 65. Quashing after promulgation: KR Can 573. Duties and powers of reviewing offrs: AA 57, 57A, RP 53A, 54. The Confirming Offr must sign here personally. AA 172 fn 1.)

My decision on the finding(s) and sentence set forth in Part I is:

I approve

I direct that the accused be not committed to prison or detention barracks until further orders.(1)

(1. AA 57A. Delete if not used.)

(Sgd) G.J.N. Gostling Brig

Date 14 Mar 45 Commanding J Corps. Confirming Officer.

PART IV. PROMULGATED AND EXTRACTS TAKEN. (RP 53, KR Can 576, 577.)

Accused. Date. Signature of Offr.

F45822 Pte Farrell, B J 19 Mar 45 A.C. Reid, Lt-Col Comdg, 1 Cdn Dis[illegible]

CR 373 Page 1 and Part 19 Dec 45

ALL DELETIONS AND ALTERATIONS WILL BE INITIALLED.

RECEIVED 8 APR 1945 JAG BRANCH C.M.H.Q.

FIELD GENERAL COURT-MARTIAL

CPA96 (In lieu of AFA3) 40/P & S/168(L) (4050) 4/38B

Convening Officer: Brigadier G S N Gostling, ED Comd 2 CBRG dated 11 Mar 45

PROCEEDINGS REVIEWED 10 Apr 45 R.U. Dick Capt REVIEWING OFFICER, JAG BRANCH C.M.H.Q.

PROCEEDINGS REVIEWED D.J. Quigley Maj Bde 2 Tech HQ 21 Army Gp. 26 Apr 45

ACCUSED.

(As to the trial of two or more charged jointly see RP 16, 71, 109. As to reasons for showing (a) permanent or confirmed rank, and (b) appmt, A/rank or A/appmt, if any, see AA 182, 183, fns, KR Can 308, 328, 330.)

Number.	(a) Prmnt R. (b) Appmt, A/R or A/Appmt.	Full Christian Names.	Surname.	Unit.
F 45822	Pte	Bernard Joseph	FARRELL	RCASC att 1 Cdn Dis Centre

PROCEEDINGS OF TRIAL.

Held in the Fd in (country) BELGIUM on (date(s)) 13 Mar 45

RECORD FORM A—OPENING PROCEEDINGS AND ARRAIGNMENT.

A1. The President, Members, waiting Member, JA, if any, and Offrs under instr, if any, assemble, and the Court is closed.

(PRINTED MATTER, NOT IN ITALICS FOR GUIDANCE, WILL BE DELETED, IF NOT USED OR APPLICABLE, AND INITIALLED BY PRES OR JA. The Schedule referred to throughout is on p 4. Citations do NOT include all relevant fmn ROs. For guidance on procedure when a variation in this form arises, see form for GCM in MML pp 741 to 759. A brief record of such variation will be made and given a number having reference to appropriate or preceding para number herein. See back of Convening Order, CF A95, for oaths and instrs on how to record addresses, evidence, etc, which instrs are hereafter called "Notes". As to general provisions for conducting the trial see AA 53, RP 56, 63-70, 73, 74, 94, 103, 119, 132.)

A2. The President initials and lays before the Court the Convening Order and Charge Sheet(s) attached thereto.(1) The Court is satisfied that it is properly convened and constituted(2), accused is (are) amenable to military law, and each charge discloses an offence.(3)

(1. As to use of Summary of Evidence see RP 17 fn 6. 2. AA 49, 50, RP 105-107. 3. RP 11-13, 23, 24.)

A3. The Court is opened. The accused is (are) brought before the Court. At 1045 hours trial commences.

A4. The Prosecutor produces a Medical Certificate that accused is (are) fit to undergo trial by court-martial.(1) ~~The Prosecutor informs the Court that accused elected to be tried by court-martial instead of being dealt with summarily by the CO.(2)~~

(1. KR Can 557. 2. AA 46(8), RP 60 fn 1. For effect see KR Can 563(c). Delete, if not applicable.)

A5. President to accused: Do you object to N.A. as interpreter? Ans N.A.

The Interpreter is sworn.(1) Do you object to N.A. as shorthand writer? Ans N.A.

The shorthand writer is sworn.(1)

(1. RP 72. Delete, if none employed.)

A6. The Convening Order and names of the President and Members of the Court are read to the accused.(1)

President to accused: Do you object to be tried by me as President or by any of the Members of the Court?

Ans NO (2)

(1. RP 110. 2. If no objection, waiting member retires. RP 68(8). If objection, see procedure AA 51, RP 25, 71, 18, MML p 742.)

A7. The President, Members, JA, if any, and Offrs under instr, if any, are sworn.(1) The following are the ranks, names and units of the offrs comprising the Court, etc:

President	Major	J M BOWMAN	48th Highrs att 1 Cdn Dis Centre
Member	Capt.	G.B. Gartael	RCA att 1 Cdn Dis Centre
Member	Lieut	E.F. McManus	RCE 2 CBRBn
Judge-Advocate			
Prosecutor	Capt.	F.C. Kara	C.I.C. att 1 Cdn Dis Centre
Defending Offr	Capt.	N.D. Bowler	C.I.C. att 1 Cdn Dis Centre

Questions by President: Is the Prosecutor a lawyer? Ans No. Is the Defending Offr a lawyer? Ans NO (2)

(1. RP 26, 27, 109, 111. List of offrs under instr will be returned separately with proceedings for information of Conv Offr.)
(2. If Pros a lawyer and Def Offr not, accused is entitled to an adjournment when RP 89 (8) and fn 2 were not followed. See D1 p 3.)

A8. The accused F 45822 Pte Bernard Joseph FARRELL before arraignment make(s) (no) (a) plea.(1)

(1. If a special plea is made for separate trial on one or more charges (RP 62(E), 108), or as to the jurisdiction of the Court (RP 34, 35(A), 113), or in bar of trial (RP 36), or as to accused's mental fitness to stand trial (AA 130, RP 57), or by one of several accused charged jointly to be tried separately (RP 16, 71), such plea, the addresses made in support or against, the evidence, if any, and finding are recorded per Notes. For forms of record see references in fns to RP cited. Insert in A8 rank and name of the accused making the plea.)

A9. The accused is (are) arraigned (separately) on all charges in the charge sheet.(1) The accused does (do) not object to any charge.(2) There is no amendment to be made to the Charge Sheet.(3) The President records the pleas in Part I of the Schedule.

(1. RP 31, 112. See para 1 of Instrs p 2. When more than one Charge Sheet see RP 62; when several accused to be tried separately see RP 71(C), and use separate copies of CF A96 to record proceedings. 2. RP 32, RP 33. If otherwise, delete and make appropriate record per Notes.)

A10. The Court (is closed and) considers the Instrs on Procedure after Arraignment at top of p 2. The proceedings are continued on Record Form Band E.

PRESIDENT OR JA WILL INITIAL ALL DELETIONS AND ALTERATIONS.

2 CBRG. Vol 5. P 3.

INSTRUCTIONS ON PROCEDURE AFTER ARRAIGNMENT.

1. *The accused may not plead or be found Guilty on more than one of two or more charges laid in the alternative.* (*RP* 37(*A*).) *As to withdrawal of alternative charges by Prosecutor see RP* 35(*C*). *No other charge can be withdrawn for any reason without authy from Convening Offr. If Convening Offr concurs, Court may accept plea of Guilty to lesser, etc, offence.* (*RP* 44(*H*).) *Accused may change a plea of Not Guilty to Guilty during trial.* (*RP* 38.) *As to refusing to plead or not pleading intelligibly see RP* 35(*A*). *As to plea when sentence may be death see RP* 35(*D*).

2. *The proceedings on each charge sheet* (*RP* 62) *after arraignment will be conducted as follows in the respective circumstances stated :*

I. If pleas to all charges are GUILTY, use Record Form B below.

II. If pleas to all charges are NOT GUILTY, use Record Form D on p 3.

III. If pleas to some charges are GUILTY and to other charges are NOT GUILTY and,

(a) *Such mixed pleas occur when there are no alternative charges in the Charge Sheet, use Record Form C below.* (*RP* 37(*A*).)

(b) *Such mixed pleas occur in a set of two or more charges laid in the alternative, see RP* 37 (*A*) *and fn* 2 *as to discretion of Court,* (i) *to try the accused on all such alternative charges as if he had pleaded Not Guilty thereto, or,* (ii) *to record the pleas as the findings of Court. After deciding between* (i) *and* (ii), *Court will proceed under foregoing instrs as may be appropriate to result of its decision. See MML p* 744 *Instrs* (2).

3. *As to responsibility of President to accused see RP* 59, 60(*C*) ; *powers and duties of JA see RP* 103 ; *duty of Prosecutor see RP* 60(*A*) (*B*) ; *duty and privileges of accused and Defending Offr see RP* 60(*C*), 87(*C*), 91, 92 ; *swearing and withdrawal of witnesses from Court see RP* 81, 82 ; *questioning of accused see RP* 80, 87(*C*), 92(*B*), *and of witnesses see RP* 83-85 ; *calling or re-calling of witnesses by Court, etc, see RP* 75-79, 86, 116 ; *use of Summary of Evidence at Trial see RP* 17(*B*) *fn* 6 ; *and responsibility of JA or Pres to record proceedings see RP* 94, 96.

RECORD FORM B—PROCEEDINGS ON PLEAS OF GUILTY TO ALL CHARGES.

B1. The President or JA, if any, complies with RP 35(B) by explaining to the accused the nature and meaning of the charge(s)(1), and that on his plea of Guilty there will be no regular trial but merely a consideration of the sentence to be awarded after he has been given an opportunity to make a statement in reference to the charge(s), call witnesses as to character and make an address in mitigation of punishment.(2)
(1. *RP 35 fn 3.* 2. *MML p 54 para 47.*)

B2. President to accused : The Court will now receive any statement you desire to make in reference to the charge(s).(1) If it appears from your statement that there are circumstances which indicate that you do not understand the effect of the plea of Guilty(2), or which show provocation or extenuation in respect of which in your interest the witnesses for the Prosecution should be examined(3), we shall advise you to change your plea to Not Guilty. In making a statement you will not be sworn or subject to cross-examination ; and anything you say will not be used in evidence against you after you change your plea. If, however, it appears to the Court that your statement affects only the amount of punishment to which you are liable, you will not be advised to change your plea and you will be given an opportunity later to prove your statement by sworn testimony, if you so desire.(4)

President to accused : Do you wish to make a statement ? Ans. NO.(5)
(1. *RP 37(B).* 2. *RP 37(D) fn 6.* 3. *RP 35(B) fn 5 para 3, MML p 54 para 47.* 4. *See para E3 of Record Form E.*
5. *Statement, if any, recorded per Notes.*)

B3. ~~The Court considers the accused's statement.(1) The Court decides (not) to advise accused to change his (their) plea(s) of Guilty to Not Guilty on ..... charge(s). The accused is (are) so informed, and he (they) change(s) his (their) plea(s) on ..... charge(s). Part I of the Schedule is amended accordingly.~~
(1. *Court may be closed to consider the statement. Delete whole or part not used.*)

B4. On the charge(s) to which the plea(s) of Guilty is (are) not changed the President records finding(s) of Guilty in Part I of the Schedule.(1)
(1. *RP 35(B). If any plea(s) is (are) changed, use Record Form C or D as appropriate.*)

B5. The Summary of Evidence is marked Ex. A, initialled and read aloud by the President.(1)
(1. *If there is no Summary, or if it is inadequate, comply with RP 37(B). If there is any evidence inconsistent with any plea standing as Guilty, Court will advise accused to change such plea and, if changed to Not Guilty, try such charge(s) by use of paras D1 to D8 inclusive of Record Form D on p 3. RP 37(D).*)

B6. The accused having been found Guilty on one or more of the charges, the proceedings are concluded by using Record Form E on p 3.

RECORD FORM C—PROCEEDINGS ON MIXED PLEAS OF GUILTY AND NOT GUILTY.

C1. As to the charges on which accused pleaded NOT GUILTY the trial is continued by using paras D1 to D8 inclusive of Record Form D on p 3 before proceeding with C 2.(1)
(1. *RP 37(A) (E).*)

C2. The charges on which accused pleaded GUILTY are read to him (them) again, and the trial is continued by using paras B1 to B5 of Record Form B above.(1)
(1. *Under B5 such parts only of the Summary of Evidence are read as relate to the charges dealt with under C2. If any plea is changed to Not Guilty, trial thereon proceeds by complying with paras D1 to D8 inclusive in Record Form D on p 3 and making an appropriate record thereof on a separate sheet.*)

C3. The accused having been found Guilty on one or more of the charges, the proceedings are concluded by using Record Form E on p 3.

PRESIDENT OR JA WILL INITIAL ALL DELETIONS AND ALTERATIONS.

RECORD FORM D—PROCEEDINGS ON PLEAS OF NOT GUILTY TO ALL CHARGES.

D1. President to accused : Do you wish to apply for an adjournment on the ground that any of the rules relating to procedure before trial have not been complied with, and that you have been prejudiced thereby, or on the ground that you have not had sufficient opportunity to prepare your defence ? Ans. .....(1)
(1. *If "yes", see RP 39(A) for procedure. Statement or evidence, if any, is recorded per Notes.*)

D2. The Prosecutor makes (an) (no) opening address.(1)
(1. *RP 39(B), 60(A) (B), 90, 92(C) (D). Record address per Notes, subject to RP 95(C).*)

D3. The evidence for the Prosecution is taken.(1)
(1. *RP 39(C), 114, KR Can 555. Record evidence per Notes. As to Prosecutor giving evidence himself see RP 39(D) (E).*)

D4. The Prosecution is closed.(1) The Defending Offr submits that the evidence for the Prosecution does not establish a prima facie case against the accused on the ..... charge(s).(2) The Court is closed, and considers the submission.(3) The Court is re-opened, and the President announces that the submission is disallowed on the ..... charge(s), and allowed on the ..... charge(s), and that, accordingly, the trial will proceed on the former, but the accused is (are) found Not Guilty on the latter charge(s).(4)
(1. *Delete remainder of this para, if submission not made.* 2. *Arguments on submission, answer and reply are recorded per Notes.* 3. *RP 40 fn 1. See MML p 72 paras 12-14 and p 81 para 42.* 4. *Delete part not used. If accused acquitted on all charges use second alternative in para D8.*)
NB : If trial proceeds, accused must be allowed great latitude in making his defence, and the Court should not stop his defence solely on ground of irrelevance. (*RP 60(C), 114, 115.*)

D5. President to accused : You will now proceed with your defence.(1) You may, if you wish, give evidence yourself on oath as to the facts or your character or both, in which case you will be subject to cross-examination.(2) You may, however, make a statement without being sworn, and you will not be subject to cross-examination.(3) But a statement which could have been made on oath will not carry with the Court the same weight as sworn testimony.(4) You may call witnesses in your defence and as to character, whether you give evidence or make a statement or do neither.

President to accused : Do you wish to give evidence yourself as a witness, make a statement, or do neither ? Ans. ..... Do you intend to call witnesses on your behalf ? Ans. ..... Are they witnesses as to character only ? Ans. .....
(1. *RP 115.* 2. *RP 40(A), see 80(D).* 3. *RP 40 fn 10.* 4. *RP 40 fns 2, 9.*)

D6. Consequent on the answers recorded in para D5 the appropriate procedure for the defence is followed.(1)
(1. *RP 114, 115, 116. For procedure see Notes on back of Convening Order, CF A95. Evidence for accused as to his character should, if in his interest, be given before the finding. See RP 46(A) fn 1, 86(C). Note the further opportunity in para E1 of Record Form E. Record per Notes addresses, statement, evidence and any summing up by the JA under RP 42, 103(e).*)

D7. The Court is closed to consider the finding(s).(1) The finding(s) of the Court is (are) recorded in Part I of the Schedule.(2) The Court is re-opened.
(1. *RP 43, 117(A). See Notes in Part I of Schedule.* 2. *RP 44(A).*)

D8. The President announces the finding(s), if any, of Not Guilty, and states to the accused that the finding(s) of the Court on the ..... charge(s), being subject to confirmation, will be promulgated later.(1)
Or, The President announces that the accused is found Not Guilty on all charges and is to be released forthwith, and that the proceedings are accordingly terminated. Part I of the Schedule is dated and signed.(2)
(1. *AA 54(3) (6), RP 45, 120(A).* 2. *AA 54(3), RP 45, 117. This alternative announcement is not applicable when there are pleas of Guilty outstanding and dealt with under Record Form B or C.*)

D9. The accused having been found Guilty on one or more of the charges, the proceedings are concluded by using Record Form E below.

RECORD FORM E—PROCEEDINGS ON CONVICTION BEFORE SENTENCE.

E1. President to accused : Do you wish to give evidence yourself or to call any witnesses as to your character ?(1)
Ans. NO.
(1. *If evidence has already been given by accused or his witnesses as to his character, delete this para. RP 37(C) fn 4, 46 fn 1. Accused and witnesses are sworn. Evidence recorded per Notes.*)

E2. The Prosecutor produces Statement(s) as to Character and Particulars of Service(1), and certified true copy (copies) of Conduct Sheet(s)(2), purporting to refer to the accused, which he submits to the Defending Offr for examination, and then to the Court for admission in evidence. The Court is satisfied that these documents refer to the accused, because (i) they purport to be signed in the manner required by AA 163(l) (g) (h), and (ii) they purport to refer to (a) soldier(s) having the same number, rank, name and corps as the accused. Admitted in evidence and marked Ex. F and Ex. G respectively.(3)
(1. *MFB 355 or AFB 296.* 2. *MFM 6.* 3. *RP 46, KR Can 558. If above documents not produced, see RP 46 fn 1 para 1.*)

E3. President to accused : Do you wish to address the Court on the Statement(s) and Conduct Sheet(s), and in mitigation of punishment ?(1) Ans. yes in mitigation(2)
(1. *RP 37(C), 46(D).* 2. *Address, if any, recorded per Notes. Court should permit accused or his witnesses to prove on oath anything here or previously stated which would affect the amount of punishment. RP 37(F) fn 7.*)

E4. The President states that the Court is closed to consider the sentence, and that the sentence to be awarded by the Court, being subject to confirmation, will not be announced, but will be promulgated later, and the proceedings in open court are accordingly terminated.(1)
(1. *AA 54(6), RP 120(A).*)

E5. The Court considers the sentence.(1) The President records the sentence in Part I of the Schedule, which is dated and signed by him and the JA, if any.(2)
(1. *When several accused tried separately see RP 71 (D). One sentence only, comprised of the punishment or punishments laid down in AA 41, 44 and its proviso, is to be awarded to cover all charges in all charge sheets on which accused found guilty. RP 68. As to sentences see AA 44, 138, 182, RP 46-50, 69, 118, 119(A), KR Can 308, 330, 563-566, Overseas RO 309, 2322, MML p 60, 757-759. As to sentences assigned for civil offences by the law of England see AA 41(5), MML p 130. When accused already under sentence of imprisonment or detention see AA 44(18), 68(7), KR Can 564. As to release from arrest by Confirming Offr see KR Can 567. As to assembly and disposal of record after trial see instrs on back of Convening Order.*
2. *RP 50. As to release from arrest by Confirming Offr see KR Can 567. As to assembly and disposal of record after trial see instrs on back of Convening Order.*)

PRESIDENT OR JA WILL INITIAL ALL DELETIONS AND ALTERATIONS.

CHARGE SHEET

The accused, F-45822 Pte Bernard Joseph FARRELL, 8 Cdn Inf Bde Coy RCASC, attached 1 Cdn Disciplinary Centre, a soldier of the Canadian Army Overseas, is charged with:-

FIRST CHARGE
AA Sec 40

WHEN ON ACTIVE SERVICE CONDUCT TO THE PREJUDICE OF GOOD ORDER AND MILITARY DISCIPLINE

in that he

in the Field on 6 Feb 45 created a disturbance in the Cafe EDISON, GHENT, by striking with a coat hanger a civilian, namely, Maria Van DRIESCHE, by throwing another civilian on the floor and by breaking glasses.

(A.O. Hood), Lt-Col.,
Commanding
1 Canadian Disciplinary Centre

In the Field
10 Mar 45

TO BE TRIED BY FIELD GENERAL COURT MARTIAL.

(G.S.N. Gostling), Brigadier,
Commander
2 Canadian Base Reinforcement Group.

In the Field
11 Mar 45

FIELD GENERAL COURT-MARTIAL

(Whether the accused to be tried is under his comd or not, a FGCM may on application to him be convened by any offr of Cdn Army Overseas, or of any other force if authorized in law, in immediate comd of troops on active service, subject to RP 105(C) and restrictions imposed by appropriate authy. AA 49, 50, RP 104-107, 114. As to the duties and privileges of the Convening Offr in dealing with the application see MML Chap V paras 20 and 23, RP 87(B).

There should be a separate Convening Order for each person to be tried separately by the same Court. RP 71(C), 109. As to separate charge sheets see RP 62, and as to separate trial on charges in the same charge sheet see RP 108. As to two or more accused charged jointly see RP 16, 109.

As to reasons for showing (a) permanent or confirmed rank, and (b) apptmt, A/rank or A/apptmt, if any, see AA 182, 183, fns, KR Can 308, 328, 330.)

ACCUSED.

Number.	(a) Prmnt R.	(b) Apptmt, A/R or A/Appmt.	Full Christian Names.	Surname.	Unit.
F-45822	Pte		Bernard Joseph	FARRELL	RCASC att 1 Cdn Disciplinary Centre

CONVENING ORDER.

1. Whereas complaint has been made to me, the undersigned, that the person(s) named above as the accused, being subject to military law, has (~~have~~) committed the offence(s) set forth in the Charge Sheet(s) attached and on (date) 11 Mar 45 endorsed by me, (~~or by an offr of my staff for me~~), "To be tried by Field General Court-Martial".

2. And whereas I am of opinion that it is not practicable that such offence(s) should be tried by an ordinary General Court-Martial; (~~and that it is not practicable to delay the trial for reference to a superior qualified offr.~~)

(Delete part in brackets when not required for compliance with RP 105(C).)

3. I hereby convene a Field General Court-Martial to try the said person(s), and to consist of the Offrs appointed or detailed hereunder.

~~4. I am unable to appoint (a) three Offrs to form the Court, (b) a Fd Offr as President, for the reasons I have attached hereto.~~

(AA 49, RP 106(B), 107(A). Delete the whole or part, if not applicable.)

~~5. I also appoint as Judge Advocate thereat the Offr mentioned hereunder.~~

(RP 106(E). Delete, if none appointed.)

PRESIDENT.

(Rank.)	(Must be named. RP 106.)	(Unit.)
Major	J M BOWMAN	48th Highrs att 1 Cdn Dis Centre

MEMBERS.

(Rank.)	(Named or detailed. RP 106.)	(Unit.)
Captain	G B CARTMEL	RCA att 1 Cdn Disciplinary Centre
Lt	to be detailed by OC 9 CBR Bn	9 CBR Bn

WAITING MEMBER.

(Rank.)	(Named or detailed, if any. RP 106.)	(Unit.)

~~JUDGE ADVOCATE.~~

(Rank.)	(Must be named, if any. RP 106.)	(Unit.)

On Active Service in the Fd

in BELGIUM (Country.)

Dat 11 Mar 45

(Signed personally. RP 105 fn 2.)
(G S T Goetling)
Commanding 2 Cdn Base Rft Gp

Brigadier (Rank.)
Convening Officer.

CONVENING OFFR WILL INITIAL ALL DELETIONS AND ALTERATIONS

(See overleaf for cache and notes for use on trial.)

4/38A CFA 98 (In Lieu of AFA 3) 4C/P & S/1697 (6143)

MFB 246

MEDICAL OFFICERS CERTIFICATE

(KR(Can) Para 55)
(CMHQ CL 173)

I certify that I have this day examined F/45822
(No.)
Pte FARRELL B.J. and in my opinion he is
(Rank) (Name)
fit ~~unfit~~ to undergo trial by Court-Martial.

Station 1 Cdn Disciplinary Centre

Date 13 Mar 45

Unit 1 Cdn Disciplinary Centre

(Sgd)
(Medical Officer)

Plea in Mitigation in case of F 45822 Pte FARRELL B.S.

Ex "E"

Pte Farrell enlisted on Oct 42 at the age of 17 years and arrived overseas Jan 44. He has been in action from 16 June 44 to the time of this charge. His present age is 20, is single and has had approx five minor offences since enlistment.

The day of the offence Pte Farrell started drinking in Antwerp on the 1630 hrs well under the influence of drink. He continued to drink but remembered nothing after 1800 hrs when he went into a cafe where a dance was in progress. He woke up in a cell in the Provost station and thought that he must have been picked up for being drunk. He has had no charges of drunkenness in the past so this must indicate that normally, Pte Farrell was not a drinking man.

Farrell is quite prepared to admit that he could have done all of the things that he is said to have done by the witnesses. He also realizes that, because of his condition at the time, he is very lucky indeed, that he is not before this Court on a much more serious charge.

Gentlemen, you are before you a man with a good record and the appearance of a very fine soldier. He has made a mistake but has learned his lesson. Is it not obvious that his only crime has been very foolish drinking after eight months in Action? It is now in the hands of this Court to consider that Farrell has learned his lesson and to award him the very minimum of sentence, or to perhaps ruin the life of a good soldier with a stiff sentence. I respectfully ask for the most lenient sentence in this case.

Lt Fowler Capt
Defending Officer

Ex. A

Bernard Joseph

Summary of Evidence in the case of F-45822 Pte FARRELL B J, 8 Cdn Inf Bde Coy RCASC, attached to 1 Cdn Disciplinary Centre, a soldier of the Canadian Army Overseas.

Charge - Conduct to the prejudice of good order (creating) a disturbance AA Sec 40

By directions of the CO the evidence is taken on oath.

~~The following documents are read over to the accused,~~ marked as Exhibits and are attached to the proceedings.

Exhibit "A" - Statement of Evidence by L-2320 Cpl OLSON J C, GHENT Detachment Cdn Provost Corps.

Exhibit "B" - Statement of Maria Van Driesche, 15 St Amand Street, GHENT, Belgium

Exhibit "C" - Statement of David WEYN, Proprietor Edison Cafe GHENT, Belgium

Exhibit "D" - Statement by Simone Pauwels, Schroonhoek 5 Sladinghe, GHENT, Belgium

FIRST WITNESS

L-2320 Cpl OLSON J C GHENT Detachment Cdn Provost Corps submits a written statement in lieu of appearance.

I certify that in my opinion the attendance of this witness is, owing to the exigencies of the service, not readily procurable and a written statment of his evidence signed by him has been read to the accused and is attached hereto as Exhibit "A"

(W D Hungerford) Capt
Officer detailed to take Summary of Evidence.

I do not require the attendance of Cpl OLSON J C for the purpose of cross-examination.

Bernard J. Farrell
(the accused)

SECOND WITNESS

Maria Van Driesche, 15 St Amand Street, GHENT

I certify that in my opinion the attendance of this witness is not readily procurable, and a written statement of her evidence signed by her, has been read to the accused and is attached hereto as Exhibit "B".

(W D Hungerford) Capt
Officer detailed to take Summary of Evidence.

I do not require the attendance of Maria Van Driesche, for the purpose of cross-examination.

Bernard J. Farrell
(the accused)

Ex. A

THIRD WITNESS David WEYN Proprietor Edison Cafe, GHENT, Belgium

I certify that in my opinion the attendance of this witness is not readily procurable, and a written statement of his evidence, signed by him, has been read to the accused and is attached hereto as Exhibit "C"

(W D Hungerford) Capt
Officer detailed to take Summary of Evidence.

I do not require the attendance of David WEYN for the purpose of cross-examination.

(the accused)

FOURTH WITNESS Simone Pauwels, Schroonhoek 5 Sladinghe, GHENT

I certify that in my opinion the attendance of this witness is not readily procurable, and a written statement of her evidence, signed by her, has been read to the accused and is attached hereto as Exhibit "D".

(W D Hungerford) Capt
Officer detailed to take Summary of Evidence

I do not require the attendance of Simone Pauwels, for the purpose of cross-examination.

(the accused)

Q Do you wish to make any statement or to give evidence on oath? You are not obliged to say anything or give evidence unless you wish to do so but whatever you say or any evidence you give will be taken down in writing and may be given in evidence.

A I have nothing to say.

The accused does not call any witness.

I certify that the foregoing Summary of Evidence, consisting of ~~two~~ pages was taken down by me inthe presence of the accused and that RP 4 (C) (D) (E) (F) and (G) have been complied with.

(W D Hungerford) Capt
Officer detailed to take Summary of Evidence.

Dated in the Field
10 Mar 45.

Exhibit 'F' Ex. 'B'

Statement of Evidence in the Case of F.45822 Pte Farrell B.J. 7 Feb 1945

Sir,

At approx 2125 Hrs, 6 Feb 45., on information received I in company with L/Cpl Thomlison proceeded to the Edison Cafe.

On arrival at the Edison Cafe, I observed pieces of glass on the floor. On questioning the proprietor, he stated that a soldier had taken drinks from the customers and drinking them had then thrown the glasses against the wall causing them to break. The soldier in question had left the Cafe before we had arrived. I then proceeded back to the Detachment HQ.

At approx 2200 Hrs on 16 Feb 45, on information received that the same soldier was back at the Edison Cafe, I in company with L/C Thomlison proceeded back to the Cafe, but again the soldier had departed. As we were about to leave the Cafe, a soldier who I know now to be the a/m entered through the door, the proprietor and two girls stated that this was the soldier who had caused all the trouble and broken the glasses.

I placed the above soldier under arrest and escorted him to Det HQ., where his particulars were taken and statements obtained from the civilian witnesses, ~~which are embodied herein: Statement of David Weyn proprietor of the Edison Cafe., 15 St Amand Straat., Ghent begins:-~~

1. Sworn State On 6 Feb 45, at approx 1930 Hrs, a Cdn soldier entered the Cafe, he went right to the bar, took the glasses which were standing on the bar and threw them all on the floor. He then without a reason assaulted a civilian customer whom he threw also on the floor, after that he left the Cafe, but, at approx 2130 Hrs he came back, threw once more the glasses which stood on the bar on the floor. At that time I left to call the MP's who immediately came and succeeded to apprehend the soldier.

Sdg: David Weyn. 15 St Amand
Proprietor Edison Cafe St Ghent. Belgium

2. Statement of Maria Van Driesche., 15 St Amand Straat., Ghent (Barmaid) begins:-

Sworn State On 6 Feb 45, at approx 1900 Hrs a soldier came in who asked for a couple of glasses of liquor. He left the Cafe but did not pay them. At about 1930 hrs he came back, went to the bar, took some glasses which stood on the bar and threw them on the floor. A Civilian customer was also molested and thrown on the floor, without any reason. After that he went back to the bar drank a couple glasses which stood on the bar, then he grabbed a wooden coat hanger with which he hurt me, injuring me in my face, I left the Cafe but as the trouble was still going on I went back and saw he was still busy throwing the glasses on the floor. But then he soon left the Cafe. At approx 2130 Hrs he came once more back went once more to the bar and emptied some glasses which stood on the bar, still without paying them, but some customers succeeded to move him out. after a while the MP's came who could apprehend him as he came once more back.

Sdg: Maria Van Driesche.

3. Statement of Simone Pauwels., Schroonhoek 5 Slaedinghe, Ghent begins:-

Sworn State On 6 Feb 45, at approx 1900 Hrs, a Cdn Soldier entered the Cafe, he molested a civilian customer, but another soldier separated them. The first soldier then threw the glasses which stood on the bar on the floor then he left. About 2000 hrs he came back, grabbed once more the glasses which stood on the bar and threw them on the floor, also a coat hanger, was crashed by means of which a girl Maria Van Driesche., was hurt at her left eye. He left but came once more back at 2145 Hrs, at that time he was apprehended by the Provost who had been warned by the owner.

Sdg: Simone Pauwels.

The above statements were translated from Flemish to English by Delacroix Leon Interpreter for Ghent Detachment 2 Cdn LofC Provost Coy.

The above soldier was then taken to the Town Guard Room where he was handed over to the NCO i/c Guard Room to be detained, a Live Body receipt was obtained and is now held on file at this Det HQ.,

J. G Olson
L.2320 Cpl Olson J.C.

I have read over and corroborate the above statement.

W. h. Thomlison
M.3823 L/Cpl Thomlison W.

Ex. C.

Exhibit 'C'
W.O. Mc Cann 1st Capt

WEYN DAVID
STAMONDSTRAAT 15
EDISON CAFE GHENT

Op 6/2/45 omtrent 19u hurm is Cdn Offr in mijn herberg welke ligt rechtstreeks naar den Hoy begint en de glazen welke in of stonden of den grond waren, een verbinders welke in den herberg tegenwoordig was werd zonder reden of den grond geworpen en hun verliet hij de café; eenige oogenblikken later omtrent 21u30 hurm hij terug en en hij smeet de verbinders hun glazen nogmaals van den Hoy af en hun van de M.P. gelogen welke oogenblikkelijk met my mede ging en is in gehuldt de schuldige aan te houden

D. Weyn

Exhibit 'D'
W.O. Mc Cann 1st Capt

MARIA VAN DRIESSCHE
5e AMANDSTR. 15
DIENSTER

Op 6/2/45 omtrent 19u hurm is een orkest in welke een paar glazen liquiden bevinden en daarna de cafe verlaat zonder te betalen. omtrent 19.30 hurm hij terug in en wende zich naar den Hoy eyenblikkelijk eenige glazen verwaarloosd hij en eenige uit stond en zonder tegen den grond werpt. Daar zijt een verbinder dat hem bij zich begaf en zonder eenige uitlag tegen de grond gooiden, Hun wende hij zich terug naar de Hoy daarna they eenige glazen hier uit en hun naar hij een kontten dapatoh vervolgde hij hij te lijf ging en hun bijte in het aangezicht en vluchte doch de Britse verwijderde behoed uit of naar de herberg en ook dat hij weitging met glazen tegen de grond te werpen stond toen verlaat hij de herberg

Ondertekend A.V.D.

Ex. "C"

~~Cordt~~ aen 21 30 huren by Sing in. en wandt eick
reynwals naer den Weg en dwers de gheeren lecy welke
es niet ey bewonden steeds sonder te betalen doch dienten
welke in waren gebuikten es in hem buiten te hegen
een rijsl huren de M.P. in welke es in gebuikt de dieden
aen te houden

Maria Van Driessel

J.M.S.

Ex. D
Exhibit "D"
PAUWELS Simone
Schoonhoek 5
Sleidinge

Den 6-2-1945 om 19.00u kwam een soldaat in het café "Colison" 9e Linmandstraat 15. De soldaat sloeg een buyen, welke in het café waren, zonder reden op den grond. Een ander soldaat heeft hun geschouden. Dan heeft eerstvernoemde soldaat al de glazen, welke op den toog stonden op den vloer kapot geslagen. De soldaat vertrok dan. Om 20.00 u. kwam hij terugen hij nam opnieuw al de glazen, welke op den toog stonden en sloeg ze opnieuw kapot op den vloer, als ook een kapstok. Doordat hij de kapstok kapot sloeg is er een meisje MARIA VAN DEN DRIESSCHE gekwetst aan het linkeroog. Hij ging weg en om 21.45u kwam hij opnieuw in het café. Dan is hij weggetogen door de Gendarmen Provost welke door de eigenaar van het café verwittigd.

Getekend,

Pauwels Simone

Ex. "F"

ARMY FORM B.296 (WAR).

Statement as to Character and Particulars of Service of Accused.

(For Use at Trials by Field General Courts-Martial only).

Number.	*Rank.*	*Name.*	*Regiment (or as the case may be).*
F-45822	Pte	FARRELL B J	8 Cdn Inf Bde Coy RCASC - 1 Cdn Disc Centre

NOTE.—The Field Conduct Sheet is to be produced in Court with this statement but is not to be annexed to the proceedings. The numbers herein stated should correspond with the number of Entries in the Field Conduct Sheet, prominence being given to the most serious offence in each entry. If the charge is for drunkenness or absence without leave, the entries for drunkenness or absence, as the case may be, should be stated separately. Any recognized special acts of gallantry or distinguished conduct recorded on the Field Conduct Sheet should also be inserted here.

1. The following is a fair and true summary of the entries in the Field Conduct Sheet of the accused, exclusive of convictions by a court martial or a civil court :—

For AA 15 (1) 1 2 times.

For AA 11 1 times.

For AA 40 1 times.

For ____ ____ times.

Date of first entry in Field Conduct Sheet 29 Nov 43

Date of last entry in Field Conduct Sheet 19 Oct 44

2. Previous convictions of the accused by a court martial or a civil court are set out in the Schedule overleaf.

*Strike out if not applicable.

*3. The accused at the present time is under sentence for N/A

beginning on the N/A day of N/A

4. The accused has been awaiting trial on the present charges for NIL days in civil custody; and for ~~30~~ NIL ~~34~~ days in military custody, *i.e.*, NIL days in open arrest, ~~NIL~~ ~~34~~ days in close arrest; of which NIL days were spent in hospital.

5. The present age of the accused is 20 Years 1 month

6. The date of his attestation ~~entry into military service~~ is 28 Oct 42

7. The service which the accused is allowed to reckon is ____

†State the military decorations (if any) held by accused.

8. The accused is in possession of† CVSM & Clasp

9. (*If the accused is a warrant officer or N.C.O.*). The accused has served continuously, without reduction, to the present date—

	Date of Promotion.
In the substantive rank of ____	____
In the war substantive rank of ____	____
In the acting rank of ____	____

INSTRUCTION.—*If any matter in any of the above paragraphs cannot be stated from the regimental books the paragraph must be struck through.*

(27853) Wt.24930/3494 24,000 7/44 A.& E.W.Ltd. Gp.698 Forms/B.296(War)/2

SCHEDULE OF CONVICTIONS BY A COURT-MARTIAL OR CIVIL COURT.

Description of Court by which tried.	Date and Place of Trial.	Charges upon which convicted.	Sentence of the Court.	Punishment remitted or sentence suspended.

I HEREBY CERTIFY that the foregoing particulars, which have been extracted from the regimental books in my custody, are correct to the best of my knowledge and belief.

Signed this 13 day of Mar 1945

1 Cdn Disciplinary Centre

Ex. G

No. F45822 Name FARRELL BJ | Sqn, Battery, or Company | Corps RCASC | Date of enlistment 28-10-42 | GC Badges | Service or Proficiency Pay 1.50 | 3/17 MFM 6 (AFB 122) 40/P&S/136 (541)

Date of last entry in Company Conduct Sheet | No. and date of last drunk | Period not reckoning towards freedom from extra fine | Sheet No | Signature OC Company, etc | Character

Place	Date of offence	Rank	Cases of drunkenness	OFFENCE	Names of Witnesses	Punishment awarded	Date of award or of order dispensing with trial	By whom awarded	Remarks
Canada		Pte		AA 15 (1) AWL From 0800 hrs 25 Nov 43 to 0945 hrs 29 Nov 43			29-11-43		forfs t days pay FR&I 149 (1)(a)
UK		Pte		AA 11		14 days CB	21Feb44		
UK		Pte		AA 40		5 days pay FR&I 149(2)&Stop pay in amt $20.00	24Jul44		
Field		Pte		AA 15(1)AWL from 1000 hrs 16Oct 44 to 1325 hrs 18Oct44(absent 2 days 3 hrs 25 mins)		28 days pay FR&I 149(2)	19Oct44		3 days pay FR&I 149(1)(a)

Duplicate created from MFM4 wef 24 Feb 45 Record of Conduct in Canada not available
G E Marin Lt Offr IC Records "E" Cdn Sec 2 Ech HQ 21 A Gp

Certified to be a true copy of MFM 6 in my possession

[illegible Capt]
1 Cdn Disciplinary Centre

(PTO)

H.Q.C. 55-F-874 CONFIDENTIAL

DEPARTMENT OF NATIONAL DEFENCE—OTTAWA, CANADA

SUBJECT

FIELD GENERAL COURT-MARTIAL

FARRAR, WARREN NELSON P-456[illegible]

CENTRAL REGISTRY	DATE	R.A. OR S.F.	INITIALS	REFERRED TO	FOR	INITIALS	DATE
				(If purpose for which referred cannot be expressed on one line, enter here "With Minute")			
							2-12-46

CONFIDENTIAL
H.Q.C. 55-F-874

OVERSEAS COMBINED

NOTICE

1. Files should be retained no longer than absolutely necessary. If a file is frequently needed at short intervals, it is better to B.F. it for two or three days than keep it out of Central Registry indefinitely. This ensures it being completed and kept in order, and also gives other officers an opportunity to see same.
2. Central Registry cannot be notified whenever a file is passed direct to another branch.
3. All outgoing correspondence bear the number of the enclosure.

PASS THIS FILE IN ENVELOPE

Correspondence to be PINNED here.

382-A

Army Form A.3.

Form for Assembly and Proceedings of Field General Court Martial on Active Service.

PROCEEDINGS.

A.
Order convening the Court.

On Active Service, this Nineteenth day of April, 1941.

Whereas it appears to me, the undersigned, an officer in Command of Canadian Military Headquarters, on active service, that the persons named in the annexed Schedule, being subject to Military Law, have committed the offences in the said Schedule mentioned.

And whereas I am of opinion that it is not practicable that such offences should be tried by an ordinary General Court Martial; *~~[and that it is not practicable to delay the trial for reference to a superior qualified officer.]~~

* Omit where Convening Officer is a Commanding Officer or is of Field Rank.

I hereby convene a Field General Court Martial to try the said persons, and to consist of the Officers hereunder named.

* Omit if not applicable.

*~~[I am unable to appoint:—~~

*~~(1.—Three Officers to form the Court.)~~

*~~(2.—A Field Officer as President.)~~

*~~(3.—Three Officers having more than one year's service.)~~

~~for the following reasons, namely:—]~~

President.

Rank.	Name.	Regiment.
Lieut. Col.	W. E. Huckvale	1 Lt. A.A.Regt, RCA

Members.

Rank.	Name.	Regiment.
Capt.	H. Z. Palmer	1 Lt. A.A.Regt, R.C.A.
Lieut.	C. R. Osler	3 Lt. A.A.Regt, R.C.A.
WAITING MEMBERS		
Lieut.	J. O. Taugher	1 Lt. A.A.Regt, R.C.A.
Lieut.	G. Lash	3 Lt. A.A.Regt, R.C.A.

* Must be signed personally by the Officer actually in command at the time, and all alterations in the composition of the Court to be initialled by him

*Signed (R. J. Montague) Major
Senior Officer
Canadian Military Headquarters.
Commanding Convening Officer.

APR 1941

SCHEDULE.

Number, Rank (*a*), Name and Unit of Accused (*b*)	Offence charged	*Plea	Finding, and if Convicted, Sentence (*c*)	How dealt with by Confirming Officer (*d*)
P.4566 Gnr. Farrar, W.N. 2 Lt. A.A. Regt, R.C.A.	First charge A. A. Sec. 9(2)	NOT GUILTY	Not Guilty	
	Second charge A. A. Sec. 10(3)	NOT GUILTY	Guilty	
	Third charge A. A. Sec. 40	NOT GUILTY	Guilty SENTENCE :- 28 DAYS DETENTION DATE OF AWARD) 30 APRIL 1941	Confirmed 2 MAY 1941

* Question to be asked of accused, if he pleads not guilty (R. of P. 39 (A)) :—
"Do you wish to apply for an adjournment on the ground that any of the rules relating to procedure before trial have not been complied with, and that you have been prejudiced thereby, or on the ground that you have not had sufficient opportunity for preparing your defence?":
Answer (*to be recorded on separate sheet if necessary*) :— No

(Signed) P. J. Montague (F. J. Montague) Major-General
Commanding Senior Officer
Canadian Military Headquarters.

(Signed) [illegible] Lt. Col.
Confirming Officer (*e*) President.

(*a*) Appointment acting [illegible] appointment, if any, to be stated in brackets after the substantive rank.
(*b*) Unless unavoidable, not more than three names are to be entered on one form, and in serious cases one only.
(*c*) Recommendation to mercy, if any, to be inserted in this column.
(*d*) It is not necessary that the Confirming Officer should sign his name in this column. Initials are sufficient.
(*e*) Must be signed by the same Officer who signs on the first page, and all alterations in the first two columns of the Schedule to be initialled by him.

Evidence and Charge Sheets (if necessary) to be PINNED here.

B. Certificate of President as to proceedings.

I certify that the above Court assembled on the 28th day of APRIL A.D. 1941, and duly tried the persons named in the Schedule, and that the plea, finding, and sentence in the case of each such person were as stated in the third and fourth columns of that Schedule.

I also certify that :—
1. The members of the Court
2. The witnesses
*(3. ~~The interpreter~~)
*(4. ~~The officers under instruction~~)
were duly sworn.

* Omit if not applicable.

Signed this 1st day of MAY 1941.

[illegible]
President of the Court Martial.

C. Certificate in case of death sentences.

I certify that the terms of *A.C.I. 570 of 1918 have been complied with.

* See footnote (b) on page 762 M.M.L. 1929.

Signed this day of 19 .

President of the Court Martial.

D. Confirmation.

I have dealt with the findings and sentences in the manner stated in the last column of the Schedule, and, subject to what I have there stated, I hereby confirm the above findings and sentences.

*(~~I direct that the soldier named in the margin be not committed to prison until further orders.~~)

* To be omitted unless penal servitude or imprisonment having been awarded, the Confirming Officer either has no authority to commit to prison, or, having such authority, recommends suspension.

Signed this day of 19 .

(F. R. Phelan) Brigadier.
Confirming Officer.
Deputy Adjutant-General
Canadian Military Headquarters.
16 MAY 1941.

Promulgated and extracts taken in the case of P4566, Gnr. Farrar, W.N.
(*a*) (Dated) 17 May 41 (Signed) [illegible] LT. COL.
OFFICER COMMANDING,
2nd L.A.A. REGT. R.C.A., C.A.S.F.

Promulgated and extracts taken in the case of
(Dated) (Signed)

Promulgated and extracts taken in the case of
(Dated) (Signed)

(*a*) When several cases are promulgated in one unit on the same day the Officer need only sign once.

(41759) Wt. 40115—493 500 M 8/40 P. St. G. 620

CHARGE SHEET

The accused, No. P-4566 Gnr. Warren Nelson FARRAR, 2 Lt. A. A. Regt. R.C.A., a soldier of the Canadian Army (Overseas), is charged with:

First Charge
Sec. 9(2)
Army Act

When on active service, disobeying a lawful command given by his superior officer --

in that he

at Ipswich, Essex, on 14 Mar 41, did enter the Co-operative Dance Hall after having received orders from his Troop Commander, Lieut. J. G. Archibald, that the Black Tiles Cafeteria was the only place "in bounds".

Second Charge
Sec. 10(3)
Army Act

Resisting an escort whose duty it was to apprehend him --

in that he

at Ipswich, Essex, on 14 Mar 41, did offer resistance to Sgt. Glasser, of the Corps of Military Police, by striking him and using a clasp knife.

Third Charge
Sec. 40
Army Act

Conduct to the prejudice of good order and military discipline --

in that he

at Ipswich, Essex, on 14 Mar 41, did use obscene language in a public dance hall.

(E. W. Neville) Lieut.-Colonel
Commdg. 2 Lt. A. A. Regt., R.C.A.

Colchester, Essex,
21 Mar 41.

To be tried by Field General Court Martial

.....Maj. Gen
Cdg. Canadian Military Headquarters

London, this 19th day of April, 1941.

Senior Officer Canadian Military Headquarters 19 APR 1941

FIELD GENERAL COURT MARTIAL

P4566, Gnr. Farrar, W.N.

1st. Witness for the prosecution (under oath)

Lieut. J.G. Archibald.

Prosecution: Your name is what?
Witness; James Grant Archibald.

Prosecution: You are attached to what battery?
Witness: 4th. Light A.A. Battery.

Prosecution: Of what Regiment?
Witness: 2nd. Light A.A. Regiment.

Prosecution: In that Battery, what is your position?
Witness: Troop Commander of 'C' Troop.

Prosecution: Gunner Farrar is in the same Battery?
Witness: Yes Sir.

Prosecution: And where is he in the battery to which you belong?
Witness: In 'C' Troop.

Prosecution: Do you remember the 13th. and 14th. of March last?
Witness: Yes Sir.

Prosecution: On these dates, where were you stationed?
Witness: At Martlesham.

Prosecution: What doing?
Witness: The Troop was doing following practice.

Prosecution: Was the accused present at the time?
Witness: Yes sir.

Prosecution: As Troop Commander, what did you do as to issuing orders.
Witness: Shortly after we took up our position, I called the troop together and gave them orders that they were not allowed to leave the camp, except to go to the Black Tiles Cafeteria.

Prosecution: You gave the troop orders that they were not allowed to go anywhere outside the camp limits, except to go to the Black Tiles Cafeteria?
Witness: Yes sir.

Prosecution: Was the Black Tiles Cafeteria in close proximity to the camp?
Witness: Yes sir.

Prosecution: Did you mention any other bounds of the camp?
Witness: No sir.

Prosecution: But you said that they could not go anywhere further away than the Black Tiles Cafeteria?
Witness: Yes sir.

Prosecution: How far from your camp site was the Black Tiles?
Witness: I would say about 500 yards.

Prosecution: How far is Ipswich from your camp?
Witness: About 3 miles.

Prosecution: What is this? (Showing paper to witness)
Witness: That is a sketch of the camp site showing the Black Tiles.

Prosecution: I submit this sketch as 'Exhibit 'A''

Prosecution: How was the order concerning the bounds of the camp given to your troop?
Witness: The troop had just finished cleaning their equipment and I gave the order verbally to the troop as a whole.

Prosecution: When this order was given to your troop, was the accused present?
Witness: Yes sir.

Prosecution: You know that?
Witness: To the best of my knowledge, yes sir.

Prosecution: Were all the troop present when the order was given?
Witness: Yes, sir, with the exception of the cooks and the batmen.

Prosecution: Is Gunner Farrar a cook or a batman?
Witness: No, sir.

Prosecution: Gunner Farrar is not a cook or a batman, and you say that the whole troop was present with the exception of the cooks and the batmen?
Witness: Yes sir.

Defence: Was there a roll call taken of the troop at the time this order was given?
Witness: No sir.

2nd. Witness for the Prosecution (under oath)

Corporal J. Rennie.

Prosecution: Your number is what?
Witness: 7684959.

Prosecution: What is your rank and your unit?
Witness: Corps of Military Police.

Prosecution: Where were you on the evening of the 14th. March, 41?
Witness: I was on duty as Corporal visiting town patrols.

Prosecution: And what did you do by way of carrying out those duties?
Witness: I called at the Co-Operative Dance Hall in Cox Lane. It is a standing order that we call there to see that everything is carried on in an orderly fashion.

Prosecution: On that evening you did visit this dance hall?
Witness: Yes sir.

Prosecution: About what time?
Witness: About 2230 Hours in the evening of March 14.

Prosecution: When you visited the dance hall that night was everything in order?
Witness: No, sir. It seems that Gunner Farrar had been stroking the buttocks of a girl, so I approached him and told him to carry on with the dancing in an orderly manner.

Prosecution: You identify the accused as Gunner Farrar?
Witness: Yes sir.

Prosecution: You asked him to go on with the dancing in an orderly manner?
Witness: Yes sir.

Prosecution: And then what did he do?
Witness: He got very abusive in his language.

Prosecution: How?
Witness: He called me a 'Red Cap Bastard' and that they had hung Red Caps in Aldershot and would do the same thing here.

Prosecution: Was he calling you 'Red Cap Bastards' in a loud tone of voice?
Witness: I wouldn't exactly say it was in a quiet tone of voice.

Prosecution: Was he in the centre of the dance floor at this time?
Witness: No, sir, he was at the edge of the dance floor.

Prosecution: After you asked him to go to the side of the dance hall and asked him to go on with the dance, did he do so?
Witness: He left me and went back on to the dance floor.

Prosecution: When was the next time you saw the accused?
Witness: About 2300 Hours.

Prosecution: Where did you see the accused this time?
Witness: On the landing at the top of the stairs where he started to get abusive again, so I told him he was being arrested for using obscene language.

Prosecution: Gunner Farrar was one of the persons on the landing?
Witness: Yes sir. He repeated more or less what he had said before, and

as a result I asked Sergeant Glasser to assist me in putting Gnr. Farrar under arrest for using obscene language in a public dance hall.

Prosecution: When you told Gunner Farrar that, what was his reaction?
Witness: He told us that 'No yellow-bellied bastard was going to arrest him'

Prosecution: After that what happened?
Witness: He struck Sergeant Glasser.

Prosecution: And then what?
Witness: We still tried to keep our prisoner and take him away.

Prosecution: Was it then that Gunner Farrar attempted to resist and the general mix-up started?

Witness: Yes.

Prosecution: Was it prior to the general mix-up that Gunner Farrar struck Sergeant Glasser.

Witness: Yes.

Prosecution: The accused striking Sergeant Glasser then was the signal for the general mix-up.

Witness: Yes sir. There was so many there that he was taken out of our custody by his comrades.

Defence: You stated that at first Gunner Farrar went back into the dance hall and then he came out again after the dance?

Witness: Yes sir.

Defence: And you also stated that you and Farrar were not in close proximity to Sergeant Glasser when Sergeant Glasser came out?

Witness: Yes sir.

Defence: And also that you did not actually put him under arrest at that time.

Witness: We had him by the arms and his comrades assisted him in getting away from us.

Court: You stated to the prosecuting Officer that Gunner Farrar had been stroking the buttocks of a girl.

Witness: I was on the landing of the stairs and saw him and saw him do it from there.

Defence: If such was the case, can you describe or can you account for the fact that in the summary of evidence there was no mention of this?

Witness: I did not think it worth mentioning at that time sir.

3rd. Witness for the Prosecution (under oath)

Sergeant Glasser, F.

Prosecution: Your number is what?
Witness: 6456485 sir.

Prosecution: Your name?
Witness: Glasser, sir.

Prosecution: Your rank?
Witness: Sergent, sir, in the Corps of Military Police.

Prosecution: On the night of the 14 March last, where were you stationed?
Witness: In Ipswich, sir.

Prosecution: As a member of the Corps of Military Police, under whom do you work?
Witness: Under the Provost Marshall, sir.

Prosecution: Do you remember what you did on the evening of March 14, 41?
Witness: Yes, sir.
Prosecution: Will you please tell us your duties on that evening?

Witness: It was my duty to visit the St. Lawrence Dance Hall and the Co-Operative Dance Hall.

Prosecution: And did you visit the Co-Operative Dance Hall?
Witness: Yes, sir.

Prosecution: About what time?
Witness: About 2200 Hours.

Prosecution: When you visited that Dance Hall at that time did you notice out of the ordinary?
Witness: At that time, sir, there was a lot of scuffling going on between some Canadian soldiers and a couple of sailors. Corporal Rennie asked me to assist him in putting under arrest one of the Canadian soldiers.

Prosecution: Which soldier did want help to arrest?
Witness: The accused, sir, Gunner Farrar.

Prosecution: Where was Gunner Farrar at that time?
Witness: On the landing at the top of the satirs sir.

Prosecution: How far away from you was he at that time?
Witness: About ten yards sir.

Prosecution: Did Corporal Rennie come toward you from Gunner Farrar?
Witness: Yes sir.

Prosecution: When you got back to Gunner Farrar, what was said?
Witness: Gunner Farrar was told he was being put under arrest for using obscene language.

Prosecution: Were you present when Corporal Rennie told the accused that he was being put under arrest?
Witness: Yes, sir.

Prosecution: As a result of that what happened?
Witness: The accused said that 'No yellow-bellied bastard was going to arrest him' and struck me in the face.

Prosecution: What happened then?
Witness: A struggle then followed. As I closed with the accused, there was a general struggle.

Prosecution: When Gunner Farrar was told he was being arrested, he struck you and then a general mix-up started?
Witness: That's correct sir.

Prosecution: Then what happened?
Witness: I never saw Gunner Farrar after that sir.

Prosecution: So that he got away from your custody in the general mix-up?
Witness: Yes sir.

Court: How do you know that the accused could hear Corporal Rennie ask you to assist in the arrest of him?
Witness: Any M.P. could have been asked to help, or any other soldier could have been asked to help in making an arrest.

Defense: You stated that you were on duty that night?
Witness: Yes sir.

Defense: Also that you were at this Dance Hall from approximately 2200 Hours until 2300 Hours?
Witness: Yes sir.

Defence: And you were on duty that night?
Witness: I am always on duty.

Defense: Again the point that the Court brought out, the fact that Corporal Rennie moved away from the accused to make the request for assistance, you say that he did move approximately ten yards away from the accused?
Witness: Yes sir.

Defense: And how were you dressed that night?

Witness: I was dressed in Blue Patrol and red hat.

Defence: Were you dancing?
Witness: I had been dancing sir.

Defence: Were you dancing when Corporal Rennie asked your assistance?
Witness: Yes sir. Corporal Rennie asked for assistance and I immediately procured my hat and went to help him.

Defence: Did the mere fact that you had your hat on mean that you were on duty and could act in the capacity of a Military Ploiceman?
Witness: No sir.

Defence: Then, how was a common soldier to know that you were on duty?
Witness: As I have said before sir, I am always on duty.

Defence: Then, why did you put on your hat when asked to assist in the arrest of this Canadian soldier?
Witness: In order that I may be correctly dressed sir.

Defence: In that case, in connection with the hat, if you were not correct-dressed, and someone was acting as he ought not to, you could not rightly do anything about it.
Witness: As I have explained sir, the hat is worn sir to more or less give a warning to the soldier that he is addressing a Military Police-man.

Defence: Did you have any other badged or anything to show that you were acting in the capacity of a Military Policeman?
Witness: Yes sir, I had on my 'CMP' Shoulder Badges. They are always on sir.

Court: You say the accused struck you?
Witness: Yes sir.

Court: Where?
Witness: In the face sir. There is just a last bit of scar to show where he hit me.

Court: Did anybody other than the accused hit you?
Witness: Yes sir.

Court: Can you positively identify the accused as the man who hit you?
Witness: Yes sir.

Court: Did either you or Comporal Rennie do anything to prevent this fight from happening?
Witness: Yes sir. In fact Corporal Rennie really tried hard to get these fellows to go away peacefully.

4th. Witness for the Prosecution (under oath)

L/Corporal Matcham, A.

Prosecution: Your number is what?
Witness: 7688005 sir.

Prosecution: Your name and Rank?
Witness: Lance Corporal Albert Matcham, sir,

Prosecution: And to what Unit do you belong?
Witness: 15th. Scottish Divisional Corps of Military Police.

Prosecution: Where were you stationed on the 14th. March last?
Witness: Ipswich, sir.

Prosecution: And what were your duties.
Witness: Town Patrol and visiting the Co-Operative Dance Hall.

Prosecution: And what did you do and where did you go on the evening of the 14th March last?
Witness: I visited the Co-Operative Dance Hall, Cox Lane.

Prosecution: When you visited that hall on that evening, what time was it?

Witness: About 2230 Hours.

Prosecution: And when you made that visit, did you notice anything out of the ordinary?

Witness: No sir. The dance was in progress in an orderly manner.

Prosecution: When was the first time that you noticed anything wrong?

Witness: I saw Corporal Rennie Bring a Canadian soldier to edge of the dance floor.

Prosecution: Was Corporal Rennie bringing the Canadian soldier forcibly to the edge of the dance floor?

Witness: No sir. He was telling the soldier to go on with the dance in an orderly fashion.

Prosecution: Corporal Rennie then had a conversation with this Canadian soldier?

Witness: Yes sir.

Prosecution: Then what happened?

Witness: The next thing I saw was Gunner Farrar taking his coat off and I heard him offer to fight.

Prosecution: What kind of coat did he take off?

Witness: His Battledress Jacket, sir.

Prosecution: What happened then?

Witness: Corporal Rennie told him th carry on with the dance in an orderly manner.

Prosecution: Then what?

Witness: The accused used very abusive language.

Prosecution: What language did he use?

Witness: He called the Corporal a 'Red Cap Bastard'

Prosecution: What tone of voice was he using?

Witness: A very loud tone of voice, sir.

Prosecution: Then what happened?

Witness: Some more Canadian soldiers came outside the dance hall.

Prosecution: Was Gunner Farrar present when the request was made for Sergeant Glasser to assist?

Witness: Gunner Farrar was present when the request was made.

Prosecution: How close were you to Gunner Farrar when this was going on?

Witness: He was across the landing sir.

Prosecution: Was it then that the accused was put under arrest?

Witness: Yes sir. Sergeant Glasser and Corporal Rennie arrested him .

Prosecution: Did they tell him why he was being arrested?

Witness: Yes sir. They told him he was being arrested for using obscene language.

Prosecution: What was Farrar's reaction th that?

Witness: He struck Sergeant Glasser.

Prosecution: You saw him strike Sergeant Glasser?

Witness: Yes sir.

Prosecution: Then what happened?

Witness: A general melee started.

Prosecution: And what was that like?

Witness: The other Canadian soldiers came in and I did not see Gunner Farrar after that.

Defence: Can you tell me where this argument took place?

Witness: On the landing at the edge of the dance floor.

Defence: Can you tell me where Sergeant Glasser was when Corp[illegible] asked him to assist?

Witness: He was on the landing.

Witness: About 2230 Hours.

Prosecution: And when you made that visit, did you notice anything out of the ordinary?
Witness: No sir. The dance was in progress in an orderly manner.

Prosecution: When was the first time that you noticed anything wrong?
Witness: I saw Corporal Rennie Bring a Canadian soldier to edge of the dance floor.

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Witness: No sir. He was telling the soldier to go on with the dance in an orderly fashion.

Prosecution: Corporal Rennie then had a conversation with this Canadian soldier?
Witness: Yes sir.

Prosecution: Then what happened?
Witness: The next thing I saw was Gunner Farrar taking his coat off and I heard him offer to fight.

Prosecution: What kind of coat did he take off?
Witness: His Battledress Jackets sir.

Prosecution: What happened them?
Witness: Corporal Rennie told him th carry on with the dance in an orderly manner.

Prosecution: Then what?
Witness: The accused used very abusive language.

Prosecution: What language did he use?
Witness: He called the Corporal a 'Red Cap Bastard'

Prosecution: What tome of voice was he using?
Witness: A very loud tone of voice, sir.

Prosecution: Then what happened?
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Prosecution: Was Gunner Farrar present when the request was made for Sergeant Glasser to assist?
Witness: Gunner Farrar was present when the request was made.

Prosecution: How close were you to Gunner Farrar when this was going on?
Witness: He was across the landing sir.

Prosecution: Was it then that the accused was put under arrest?
Witness: Yes sir. Sergeant Glasser and Corporal Rennie arrested him .

Prosecution: Did they tell him why he was being arrested?
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Prosecution: You saw him strike Sergeant Glasser?
Witness: Yes sir.

Prosecution: Then what happened?
Witness: A general melee started.

Prosecution: And what was that like?
Witness: The other Canadian soldiers came in and I did not see Gunner Farrar after that.

Defence: Can you tell me where this argument took place?
Witness: On the landing at the edge of the dance floor.

Defence: Can you tell me where Sergeant Glasser was when Corporal Rennie asked him to assist?
Witness: He was on the landing.

Defence: Sergeant Glasser was just standing there in the general crowd on the landing?
Witness: Yes sir.

Defence: How close was that to Corporal Rennie?
Witness: About two or three feet away I should think.

Defence: Would you describe this landing?
Witness: There was a staircase leading up to the landing. The landing itself was about 12 feet square with swing doors leading from the landing into the dance floor.

Defence: And where on this landing did the argument take place?
Witness: More or less on the dividing line between the landing and the dance floor.

Defence: Where were you at this moment?
Witness: I was on the opposite side of the door.

Defence: Quite well within hearing of all that was going on?
Witness: Yes sir.

Defence: You are quite sure of that?
Witness: Yes sir.

5th. Witness for the Prosecution (under oath)

L/Corporal Herve, J.

Prosecution: Your number is what?
Witness: 7685035 sir.

Prosecution: And your name?
Witness: James Herve sir.

Prosecution: Your rank is what?
Witness: Lance Corporal sir.

Prosecution: In what unit?
Witness: The 15th. Scottish Divisional Provost Company, Corps of Military Police.

Prosecution: Where were you stationed on the 14 March, 1941?
Witness: Ipswich, sir.

Prosecution: And what were your duties?
Witness: I was a representative for the Provost Marshall and my duties were to attend the dance hall.

Prosecution: What dance hall?
Witness: The Co-Operative Dance Hall, Cox Lane.

Prosecution: And as part of your duties did you go to the Co-Operative Dance Hall on 14 March 1941?
Witness: I did sir, accompanied by L/Corporal Matcham.

Prosecution: At what time did you visit the Co-Operative Dance Hall?
Witness: The first time sir?

Prosecution: Yes, the first time.
Witness: About 1930 Hours, sir.

Prosecution: When did you next go back to the Dance Hall?
Witness: About 2030 Hours, sir.

Prosecution: And was there anything out of the ordinary going on at that time?
Witness: No sir.

Prosecution: Then everything was peaceful then?
Witness: Yes sir.

Prosecution: And did you remain in the dance hall then?
Witness: I remained in the dance hall then sir.

Prosecution: How long did you stay at the Dance Hall?
Witness: Until about 2330 Hours sir.

Prosecution: During that hour that you were there did anything happen?
Witness: Yes sir. There were two or three soldiers using obscene language

Prosecution: Do you know any of those soldiers that were using the obscene language?
Witness: Yes sir.

Prosecution: Who were they?
Witness: The accused was one of them sir.

Prosecution: The accused was one of the soldiers that were using obscene language?
Witness: Yes sir.

Prosecution: How was he using obscene language?
Witness: He was very abusive to Corporal Rennie. He also called him 'A yellow bellied bastard' in a loud tome of voice.

Prosecution: Where did the accused say this to the Corporal?
Witness: On the landing just at the door of the dance hall.

Prosecution: Then what happened?
Witness: Corporal Rennie asked the accused to go away, and I myself took the accused and tried to help him to put his coat on.

Prosecution: Did he go away them?
Witness: No sir. He stayed there about 20 minutes.

Prosecution: Could Farrar hear Corporal Rennie ask him to go away quietly?
Witness: Yes sir.

Prosecution: And where were you when the Corporal asked Farrar to leave?
Witness: I was on the landing at the door.

Prosecution: How close to Corporal Rennie were you?
Witness: I was almost right beside him.

Prosecution: Could you hear Corporal Rennie tell the accused to go away?
Witness: Yes sir. I heard him.

Prosecution: Then what happened?
Witness: Sergeant Glasser went over to them and talked to them.

Prosecution: What happened then?
Witness: The accused hit Sergeant Glasser.

Prosecution: Where did the accused hit Sergeant Glasser?
Witness: In the face sir.

Prosecution: Did you hear what was said at the time this blow was struck?
Witness: The accused said 'No yellow bellied bastard is going to arrest me'. After the blow was struck I made to get over to Sergeant Glasser and was jumped on from behind by another Canadian soldier.

Prosecution: During the general mix-up, what happened to the accused?
Witness: The accused past me, jumping over top of me and ran down stairs.

Prosecution: Where were you at that time?
Witness: I was lying on the ground.

Defence: You say you visited the dance hall at various hours?
Witness: Yes sir.

Defence: The last time you visited the dance hall, were you alone?
Witness: No sir. I had Corporal Matcham with me.

Defence: When Corporal Rennie asked the accused to go away, you say the accused took off his coat?
Witness: Yes sir. The accused took off his coat advanced in a fighting attitude.

Prosecution: How long did you stay at the Dance Hall?
Witness: Until about 2330 Hours sir.

Prosecution: During that hour that you were there did anything happen?
Witness: Yes sir. There were two or three soldiers using obseene language

Prosecution: Do you know any of those soldiers that were using the obscene language?
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Prosecution: Who were they?
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Prosecution: The accused was one of the soldiers that were using obscene language?
Witness: Yes sir.

Prosecution: How was he using obscene language?
Witness: He was very abusive to Corporal Rennie. He also called him 'A yellow bellied bastard' in a loud tone of voice.

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Witness: I was almost right beside him.

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Defence: You say you visited the dance hall at various hours?
Witness: Yes sir.

Defence: The last time you visited the dance hall, were you alone?
Witness: No sir. I had Corporal Matcham with me.

Defence: When Corporal Rennie asked the accused to go away, you say the accused took off his coat?
Witness: Yes sir. The accused took off his coat and advanced in a fighting attitude.

Defence: You say that the accused took his coat off in a threatening attitude and then he rushed at you?
Witness: No sir, he didn't rush at me. He jumped over me.

Defence: Wouldn't it be the natural thing to do to cover your face if you were on the floor as you say you were? How was it that you could see Gunner Farrar?
Witness: I was lying on my back, and saw him as he jumped over me.

Defence: You say that at the dance hall, you went with Corporal Matcham. How many other Military Policemen were there?
Witness: When I went to the dance hall with Corporal Matcham, there was no-one there but Corporal Matcham and myself.

Defence: Was that the first time you visited the dance hall?
Witness: Yes sir.

Defence: The last time you visited the dance hall, how many Military Policemen were there?
Witness: Three sir.

Defence: Then in that case, Sergeant Glasser was there on duty, is that right?
Witness: Yes sir.

Defence: Where were all these Military Policemen?
Witness: All three were on the landing of the dancehall.

Defence: Sergeant Glasser, where was he?
Witness: Sergeant Glasser was outside the dance hall floor on the landing.

Defence: What was Sergeant Glasser doing at that time?
Witness: Sergeant Glasser had been dancing sir on the dance floor.

Defence: Apart from this statement them, 'No yellow bellied bastard', was there any other form of obscene language used?
Witness: None sir, except that he repeated it a dozen or more times.

Prosecution: That is the case for the Prosecution.

1st. Witness for the Defence (under oath)

P4566, Gunner Farrar, W.N.

Defence: Gunner Farrar, will you give my briefly a statement of what did occur on the night of the 14th March 1941?
Witness: I attended a dance at Ipswich. I asked this girl to dance and she gave her consent to dance with me, when a sailor started an argument with me. It seems she was his fiancee and he took a threatening attitude when I asked her to dance with me. An M.P. came over to where we were arguing and called me off the dance floor. I tried to explain to him the circumstances and he would not listen. Gunner Bulger saw me and he came over to me. The M.P., I think it was Corporal Rennie, seemed to want to make an issue of the whole thing and the sailor wanted to fight. Gunner Bulger made for the landing and with that some more men and M.P's and soldiers started arguing and then I heard somebody shouted, 'What the Christ goes on here. I'll soon put a stop to this. Sergeant Glasser came out and then somebody jumped on my back and somebody kicked me below the left eye. The dance hall was closed so I proceeded down stairs with Bombardier Snider and Gunner Campbell. A truck was parked up by the door of the dance hall and it was then that I noticed that Gunner Bulger was not with us. Then I saw Gunner Moran assisting Gunner Bulger who was in a very dazed condition, and was holding his head. Gunner Bulger then asked a policeman to lay a charge against the M.P's. The policeman just laughed and told us to get back to camp. At approximately 1300 Hours the following day we were told to line up in single file and four of us were picked out. We broke camp that evening and I went to report to the Orderly Sergeant and he told me I was under close arrest. On the 20 March, that was, and I was escorted to the Guard Room. I was brought up before Capt. Hodson who remanded me for the Colonel and who remanded me for Court Martial.

Defence: When you were talking with Corporal Rennie, where were you?
Witness: I was on the landing of the dance hall. I was just about on the threshold of the floor.

Defence: You say that at that time you did not have your great coat?
Witness: No sir. My great coat was in the check room, sir.

Defence: Were there any pegs along the landing to hang your coats?
Witness: No, sir. There was a check room provided for them.

Defence: There was a check room provided for the coats and respirators and things?
Witness: Yes sir.

Defence: You state that Sergeant Glasser came out of the dance hall?
Witness: Yes sir. He came out of the dance hall and hit Gunner MacCumber.

Defence: Where was Gunner MacCumber in relation to you?
Witness: He was behind two or three sailors who were just behind the one I had the argument with.

Defence: Sergeant Glasser then came out on to the landing and closed with Gunner MacCumber and hit him?
Witness: Yes sir.

Defence: He was out on the landing?
Witness: Yes sir. Gunner MacCumber was out on the landing.

Defence: And how far away from you would he be?
Witness: He was standing about five feet away sir. Not any more than that.

Defence: Was there anything about the dress of Sergeant Glasser that would lead you to believe that he was on duty at that time?
Witness: No sir.

Defence: Did he at that moment have his cap on?
Witness: No sir. He did not.

Prosecution: You say that on the evening of March 14, 1941 you attended a dance at Ipswich?
Witness: Yes sir.

Prosecution: How did you happen to be in Ipswich?
Witness: I just went there.

Prosecution: From where?
Witness: From the camp sir.

Prosecution: What camp?
Witness: I do not know the name of it sir.

Prosecution: Where was it situated?
Witness: Not far from Ipswich.

Prosecution: Approximately how far from Ipswich?
Witness: About three or four miles, I should say.

Prosecution: How did you get there?
Witness: In a car sir.

Prosecution: What time did you get to the dance?
Witness: I could not say sir.

Prosecution: Approximately again.
Witness: I would say between ten and eleven.

Prosecution: So that this mix-up started soon after you gat to the dance?
Witness: It wasn't right after I got there sir.

Prosecution: It must have started very close to the time that you arrived if you did not reach the dance hall before the time that you state.
Witness: I was having a good time until this sailor started to argue with me.

Prosecution: You say that you asked a girl to dance who had been dancing with a sailor and then you got into an argument with the sailor and during the time you were in the argument, Corporal Rennie asked you to come to the edge of the dance hall.

Witness: It was an M.P. called me to the side of the hall.

Prosecution: Did you go back after talking to M.P.?

Witness: No sir.

Prosecution: Then where did you go?

Witness: I stayed there on the threshold of the dance floor.

Prosecution: You have heard the evidence that the Corporal went to get Sergeant Glasser?

Witness: I never saw Sergeant Glasser.

Prosecution: You say you never saw Sergeant Glasser?

Witness: No sir. Not until he struck Gunner MacCumber sir.

Prosecution: So that according to you, Sergeant Glasser and Corporal Rennie and Corporal Matcham are all lying?

Witness: I guess so sir.

Prosecution: They are all lying when they say that you were told by Corporal Rennie that you were being placed under arrest.

Witness: I am telling the truth sir.

Prosecution: What conversation did you have with Corporal Rennie?

Witness: I had very little conversation with Corporal Rennie, I was having an argument with the sailor, and he wouldn't listen to reason sir.

Prosecution: And was it then that you used abusive language to either the sailor or the Corporal Rennie?

Witness: I do not remember using any abusige or obscene language sir.

Prosecution: When did you come to this part of the coubtry?

Witness: I cannot really say sir, but I think it was sometime in January or February.

Prosecution: From where did you come?

Witness: From Aldershot sir.

Prosecution: You did not make mention of the fact that 'You had fucked the M.P's in Aldershot' and would do the same here' did you?

Witness: No sir.

Prosecution: Did you strike Sergeant Glasser?

Witness: No sir.

Prosecution: Then Sergeant Glasser and Corporal Rennie and Corporal Herve and Corporal Matcham are all lying when they say they saw you strike Sergeant Glasser?

Witness: I am telling the truth sir.

Prosecution: You are telling the truth?

Witness: Yes sir.

Prosecution: Then who did strike Sergenat Glasser?

Witness: I Don't know sir.

Prosecution: Did MacCumber?

Witness: No sir.

Prosecution: Are you sure?

Witness: I did not see MacCumber strike Sergeant Glasser.

Prosecution: And you were not told by Corporal Rennie that you were being put under arrest?

Witness: No sir.

Prosecution: How many Military Police were in that dance hall that night?

Witness: There was five at least sir.

Prosecution: Were Sergeant Glasser and Corporal Rennie and Corporal Herve and

Witness: Corporal Matcham there on duty that night?
I saw all of them there that night sir.

Prosecution: Were they all there at one time?
Witness: Yes sir. I saw them there all at one time.

Prosecution: At the time that MacCumber was hit, where was he standing?
Witness: He was standing at the side of the landing sir.

Prosecution: You also agree that you had an argument with a sailow that night?
Witness: Yes sir. I had an argument with a sailor that night.

Prosecution: And you say you are telling the truth?
Witness: Yes sir. I am telling the truth.

2nd. Witness for the Defence (under oath)

P6692, Gunner Robinson, W.R.

Defence: Your name is Gunner Robinson?
Witness: Yes sir.

Defence: You are a member of the 4th. Light A.A. Battery?
Witness: Yes sir.

Defence: Of what Regiment is that battery a part?
Witness: 2nd. Cdn Lt. A.A. Regiment, sir.

Defence: On the evening of the 14 March, you were at the Co-Operative Dance Hall?
Witness: Yes sir.

Defence: While there did you see Gunner Farrar and Corporal Rennie talking?
Witness: No sir.

Defence: Where were you in relation to Gunner Farrar when he was having the argument with the sailor?
Witness: I was on his left, between him and the door leading to the dance hall.

Defence: From your last statement, that puts you between the door leading from the dance hall to the landing and the position where Gunner Farrar was.
Witness: Yes sir.

Defence: Can you draw me a sketch of the layout of the dance hall showing the approximate position of yourself and Gunner Farrar?
Witness: Yes sir. (Witness proceeds to draw said sketch)

Defence: This then is a sketch of the dance hall showing the approximate position of yourself and Gunner Farrar at that time?
Witness: Yes sir.

Defence: You have marked out here where you were in relation to Gunner Farrar?
Witness: That's right sir.

Defence: I wish to tender this sketch.

Court: At what moment of time were these people in this position?
Witness: At the time that Gunner Farrar was having an argument with a sailor.

Court: Before the time Corporal Rennie had spoken to Gunner Farrar?
Witness: The first thing that happened was that Corporal Rennie spoke to Farrar? That was on the dance hall floor. He called him over to the edge of the floor and talked to him.

Defence: After Corporal Rennie had spoken to Farrar, what did he do?
Witness: He went inside the dance hall.

Defence: To get Sergeant Glasser?
Witness: It could have been to do that sir.

Defence: Then after he had gone to get Sergeant Glasser, can you describe the position of Gunner MacCumber at that time?

Witness: He was at the right hand side of the door.

Defence: And finally, were there any members of the C.M.P. there?

Witness: Yes sir, there were.

Defence: Would you mark them in on the sketch please? Then, according to this, they were between Gunner MacCumberand the door leading to the dance floor.

Witness: Yes sir.

Prosecution: What time did you get to the dance?

Witness: About ten o'clock.

Prosecution: How did you happen to be in Ipswich?

Witness: I went in from our camp at Martlesham.

Prosecution: What troop do belong to?

Witness: 'C'Troop sir.

Prosecution: How far away from Martlesham, is Ipswich?

Witness: About six to six and a half miles.

Prosecution: How did you get from Martlesham to Ipswich?

Witness: By truck sir.

Prosecution: Whose truck?

Witness: It was a lumber truck.

Prosecution: When you got there about ten o'clock, did you do any dancing?

Witness: Not much sir.

Prosecution: Did you see an argument start on the dance floor?

Witness: No sir.

Prosecution: When did you first see Gunner Farrar and Corporal Rennie talking together?

Witness: I did not see them talking together.

Prosecution: Were you on the dance floor from ten o'clock to the time the dance closed?

Witness: Yes sir.

Prosecution: You were in the vicinity all that time?

Witness: Yes sir.

Prosecution: During the whole of that time, did you notice anything out of the ordinary?

Witness: Nothing until the argument on the landing.

Prosecution: And then you went out on the landing about what time?

Witness: Just before the dance broke up.

Prosecution: When you got out on the landing, who was there?

Witness: A number of soldiers and sailors.

Prosecution: What were they doing?

Witness: Oh, there was a bit of arguing going on and the usual jostling that happens when there is a crowd of soldiers and sailors all trying to get out of a dance.

Prosecution: Where was this arguing taking place?

Witness: On the landing sir.

Prosecution: Was Gunner Farrar mixed up in it?

Witness: He was in an argument with a sailow.

Prosecution: Did you see any M.P's while they were arguing?

Witness: No sir.

Prosecution: And what was the next thing that happened after Farrar and the sailor were arguing?

Witness: That was when the fight started. While the argument was going on, Sergeant Glasser came out of the dance hall and knocked Gunner MacCumber down and that set the cap off everything.

Prosecution: How did the fight start?
Witness: Well, when the Sergeant hit Gunner MacCumber, everybody started swinging at everybody else.

Prosecution: You say that while Farrar was arguing with the sailor, the Sergeant came out of the dance hall.

Witness: Yes sir.

Prosecution: Was there any violence before that time?
Witness: No sir. It was when the M.P. came out and hit Gunner MacCumber that everything started.

Prosecution: What happened then?
Witness: We tried to get out fellows to go and get their coats and get out of it.

Prosecution: Was there any undue noise about this fight?
Witness: There was quite a lot of noise.

Prosecution: Was there any more noise than usual?
Witness: Well, not outside of the argument.

Prosecution: You say that the other M.P's were on the landing at that time?
Witness: Yes sir.

Prosecution: And did they make any move to stop the argument?
Witness: They made no move to interfere with it at all.

Prosecution: They made no move whatever to interfere?
Witness: No sir. They made no move whatever.

Prosecution: Sergeant Glasser came out of the hall and knocked over Gunner MacCumber?

Witness: Yes sir. He struck him with his fist as he came out the door.

Prosecution: What was Gunner MacCumber doing?
Witness: He was just standing by.

Prosecution: He was just standing idly by, and taking no part in the argument?
Witness: No sir, he was taking no part in the argument or in the fight.

Prosecution: And he was just standing by when the Sergeant of the M.P's rushed out?

Witness: Yes sir.

Prosecution: You are sure that he was taking no part in the fight?
Witness: Yes sir.

Prosecution: How long did this fight last?
Witness: I would say that it did not last any more than about two or three minutes.

Prosecution: Then it wasn't a very bad fight?
Witness: There were a few fists flying around there for a few minutes.

Prosecution: Then it was just a general melee?
Witness: Yes sir.

Prosecution: And no-one was fighting anybody in particular, just fighting?
Witness: I could not say against whom the fists were flying. Everybody was just fighting everybody else.

Prosecution: Did you get into the fight?
Witness: No sir.

Prosecution: Was Farrar doing any fighting?
Witness: As soon as the fight started, he started for the sailor with whom he had been arguing.

Prosecution: Oh, so then he started for the sailor with whom he had been arguing.

Court: Between Gunner MacCumber are three Military Policemen.
Witness: Yes sir

Court: How many other people were on the landing?
Witness: Quite a crowd sir.

Court: Gunner MacCumber was not standing on the landing with Gunner Farrar.
Witness: No sir. MacCumber was having nothing to do with the sailor.

Court: The Military Policemen were at the head of the stairs and between where this argument was going on, oand the landing.
Witness: Yes sir.

Court: The argument between Farrar and the sailor was going on at this time?
Witness: Yes sir.

Court: And where was MacCumber at this time?
Witness: He was standing at the side of the wall all alone.

Court: And the argument was going on here? (pointing to sketch)
Witness: Yes sir.

Court: And you say that the Sergenat of the M.P's came past these three other M.P's out on to the landing?
Witness: Yes sir. He rushed out and shouted, 'What the Christ is going on here? I'll soon put a stop to this'

Court: What caused Sergeant Glasser to rush out?
Witness: I don't know sir.

Court: You three were the only Canadians from your unit that were there at that dance?
Witness: The other two were from our battery. There were two more from our battery there too, Gunner Thomas and Gunner Moran.

Court: How long had you been standing on the landing?
Witness: All the time that the argument was going on between the sailor and Gunner Farrar sir.

Court: And you had not seen the M.P. talk to Gunner Farrar?
Witness: No sir.

Court: Did you see one of the M.P's go into the dance hall?
Witness: No sir.

Court; You have shown three here (showing the sketch), where were the others?
Witness: I don't know exactly sir.

Court: Where was Gunner MacCumber?
Witness: He was over against the wall, where he had been knocked by the Sergeant.

Court: And where was Gunner Bulger?
Witness: I did not see him on that side of the landing at all sir.

Court: He was not with Gunner Farrar?
Witness: No sir.

Court: If he was not there at that time then Gunner Farrar is lying if he says he was?
Witness: Yes sir.

3rd Witness for the defence (under oath)

F20282, Gunner MacCumber, W.G.

Defence: You belong to what battery?
Witness: To the 4th Light A.A. Battery sir.

Defence: To what regiment?

Witness: To the 2nd Light A.A. Regiment.

Defence: To what troop do you belong?
Witness: To 'C' Troop sir.

Defence: On the night of the 14 March 1941, were you present at the dance at Ipswich?

Witness: Yes sir.

Defence: While there did you see an argument between Gunner Farrar and a sailor?

Witness: Yes sir. On the landing outside the door of the dance floor.

Defence: Where were you when this argument was going on?
Witness: I was accross the hall to the left of the hall.

Defence: Could you show me approximately where you were standing? (Showing the witness the sketch)

Witness: I was standing right about here sir. (Pointing out his position on the sketch)

Defence: Is this sketch a true representation of your position at that time?

Witness: Yessir.

Defence: Now, while you were standing there did you see any members of the Corps of Military Police?

Witness: Yes sir.

Defence: How many?
Witness: There was one standing beside the sailor and Gunner Moran was talking to another of them.

Defence: What were you doing out on thelanding?
Witness: I was watching the argumet accross the hall.

Prosecution: How did you happen to be in Ipswich that night?
Witness: I went to Ipswich to go to a dance.

Prosecution: From where did you go to the dance?
Witness: From Martlesham sir.

Prosecution: Who was at Martlesham?
Witness: 'C' Troop of the 4th Light A.A. Battery sir.

Prosecution: How far away from your camp was Ipswich?
Witness: I do not know the exact distance, sir.

Prosecution: Well, approximately?
Witness: About three miles.

Prosecution: Who was with you?
Witness: Myself, Gunner Bulger, Gunner Thomas, R.S., L/Bdr, Shepard.

Prosecution: Is that all?
Witness: No sir, there were several of out troop that went to the dance that night.

Prosecution: How many?
Witness: I cannot say the correct total sir.

Prosecution: About how many then?
Witness: About eight or ten I guess.

Prosecution: And aside from them, Gunner Farrar and three others went in a private car to the dance?

Witness: Yes sir.

Prosecution: How did you get to Ipswich from your camp?
Witness: By truck sir.

Prosecution: How do you mean 'By truck'
Witness: Well sir, we were standing by the side of the road and got picked up by the truck.

Prosecution: Where did you get picked up by this truck?
Witness: Just outside of the camp sir.

Prosecution: How much nearer is that than the Black tiles Cafeteria?
Witness: It was on the other side of the camp sir, in the direction of Ipswich.

Prosecution: What time did you get to the dance?
Witness: Oh, I would say about some time between 9.30 and 10.30.

Prosecution: Were you there when Gunner Farrar arrived or was he there ahead of you?
Witness: As far as I know sir, he was there before I arrived.

Prosecution: And you stayed there up to the time the dance closed?
Witness: Yes sir.

Prosecution: Did you see any disputed on the dance floor that night?
Witness: No sir.

Prosecution: What time was it when you went out on to the landing?
Witness: Just before the dance ended.

Prosecution: And when you got out on to the landing, who was on the landing?
Witness: A whole crowd was out on the landing.

Prosecution: You went out on to thelanding and then you took up a position to the left of the door?
Witness: Yes sir.

Prosecution: Was the dance still in progress?
Witness: They were just playing thelast waltz.

Prosecution: They were playing thelast waltz, and some of the people were just beginning to come out of the hall. Is that right?
Witness: Yes sir.

Prosecution: Where was Gunner Farrar?
Witness: On the right of the door.

Prosecution: About how far away from the door?
Witness: About five feet.

Prosecution: What was he doing?
Witness: He was talking to a sailor.

Prosecution: Was there anybody else there with Gunner Farrar?
Witness: Corporal Rennie.

Prosecution: Do you know Gunner Robinson?
Witness: Yes sir.

Prosecution: Was he there?
Witness: He was standing in front of Gunner Farrar, with his back to him.

Prosecution: Was he close to him?
Witness: Quite close to him.

Prosecution: And was there any other M.P's close to them at that time?
Witness: There was another M.P. there at that time.

Prosecution: Oh, now there was another M.P. on the landing.
Witness: Yes sir. He was talking to Gunner Moran.

Prosecution: Where was he?
Witness: To my left.

Prosecution: To your left?
Witness: Yes sir.

Prosecution: That would put them then, farther away from the dance hall?
Witness: Yes sir.

Prosecution: Were there any other M.P's on the landing?

Witness: I did not notice any sir.

Prosecution: Who else was on that landing that you can remember?
Witness: Gunner Thomas was there sir.

Prosecution: And where was he standing?
Witness: In the doorway.

Prosecution: Between you and the dance floor then?
Witness: Yes sir.

Prosecution: Who else that you can remember was on that landing?
Witness: I don't remember now sir.

Prosecution: Were there a lot of Imperial soldiers?
Witness: There were a lot of Imperial soldiers and sailors there sir.

Prosecution: Were there any young ladies there?
Witness: I didn't see any sir.

Prosecution: Then as far as you can remember there were some Imperial soldiers and sailors and these other members of your party on the landing.

Witness: Yes sir.

Prosecution: And it was Gunner Thomas who was between you and the door, standon your right?

Witness: Gunner Thomas was standing right here sir, (pointing out the position on the sketch)

Prosecution: Where was Bulger? Was he with Gunner Farrar?
Witness: No sir.

Prosecution: Then if Gunner Farrar says he was, Gunner Farrar is lying.

Prosecution: (Showing sketch) Where were the Imperial soldiers and sailors?
Witness: They were collected about here sir. (Showing position on the sketch)

Prosecution: Now then, what happened to this little argument between Farrar and the sailor and Corporal Rennie?

Witness: Well sir, all at once the argument turned into a fight between everybody.

Prosecution: Did you hear any bad language being used?
Witness: No sir. Not any more than would be heard in an argument.

Prosecution: What was the next thing you remember?
Witness: I was struck a blow on the face sir.

Prosecution: You were just standing by watching the proceedings and suddenly for no reason at all someone struck you?

Witness: Yes sir. I was taking no part in the argument at all.

Prosecution: Who struck you?
Witness: I don't know sir.

Prosecution: You don't know who it was. And then what happened?
Witness: Well, it was then that the fight started.

Prosecution: It was then that this general melee started?
Witness: Yes sir.

Prosecution: Who got in this general fight?
Witness: I was dazed when my head hit the wall and didn't take any particular notice.

Prosecution: How long would you say that this fight lasted?
Witness: About one and a half minutes.

Prosecution: What happened then?
Witness: I saw Gunner Farrar coming towards me with his great coat and respirator.

Prosecution: What did you do then?
Witness: We just proceeded down stairs.

Prosecution: Where was the M.P. that had been talking to Gunner Farrar?
Witness: I don't know sir.

Prosecution: Where was the M.P. that had been talking to Gunner Moran?
Witness: I don't know.

Prosecution: What happened when you got down stairs?
Witness: We found out that Gunner Bulger wasn't with us.

Prosecution: Why did you particularly notice that Gunner Bulger was not with you?
Witness: Well, sir, he came with us and we were all going to go back together.

Prosecution: Was there an M.P. at the door down stairs?
Witness: Yes sir, a Sergeant.

Prosecution: Who was he?
Witness: I don't know sir.

Prosecution: He was the only one?
Witness: Yes sir.

Prosecution: Who else was there?
Witness: Only the people that were coming out of the dance and a few civilian policemen.

Prosecution: When did the civilian policemen come there?
Witness: Not very long after we came down stairs sir.

Prosecution: What did they do?
Witness: They were just standing around.

Prosecution: How many of them were there?
Witness: I couldn't say.

Prosecution: Would there be ten or twelve or more or less?
Witness: No sir, not that many, just two or three.

Prosecution: But there was no sign of the Military Police?
Witness: I did not see them again that night.

Prosecution: What did you do when you found out that Gunner Bulger was not with you?
Witness: I was going to go back upstairs to get him but was prevented from going up by Bombardier Snider. Just after that two of our men brought Gunner Bulger to the door and then there were two more came out.

Prosecution: Yes go on.
Witness: Gunner Bulger was in pretty bad shape and he asked the civilian police to lay a charge of assault againg t the M.P's and they just laughed and said to go back home.

Prosecution: (Showing the witness the sketch) There is where Gunner Robinson marked himslef and he marked you in there. Is that correct?
Witness: Yes sir.

Prosecution: And Thomas was with Gunner Moran?
Witness: Yes sir.

Prosecution: And was an M.P. between you and the door?
Witness: Yes sir.

Prosecution: It could be possible that five M.P's were there on that landing?
Witness: I don't know.

Prosecution: But you are quite sure that there was one M.P. with Gunner Farrar and the sailor?
Witness: Yes sir.

4th Witness for the Defence (under oath)

F12127, Gunner Campbell, H.

Defence: Your name is what?
Witness: Campbell sir.

Defence: And your number?
Witness: F12127

Defence: You are a member of what battery?
Witness: The 4th. Light A.A. Battery.

Defence: What regiment?
Witness: 2nd Light A.A. Regiment.

Defence: What troop do you belong to?
Witness: 'F' Troop.

Defence: Can you tell me where you were on the night of March 14?
Witness: I was in Ipswich sir.

Defence: Whereabouts in Ipswich?
Witness: At the Co-Operative Dance Hall sir.

Defence: Did you see any argument going on at the dance?
Witness: Yes there was an argument going on sir.

Defence: Who was in this argument?
Witness: It seems there was some sailors started it with some of out boys.

Defence: Was Gunner Farrar there?
Witness: Yes sir. He was there.

Defence: How did it all start?
Witness: Well, an M.P. came running out of the dance hall and said 'What the Christ is going on here' and hit Gunner MacCumber.

Defence: Where was Gunner MacCumber when he was hit?
Witness: He was standing on the landing opposite Gunner Farrar.

Defence: On what side was he standing?
Witness: It was on the left because I was standing facing the door.

Defence: Was he over by the wall, or in the middle of the floor?
Witness: He was leaning against the railing and I was facing the dance floor.

Defence: Did you see any members of the Military Police there?
Witness: Yes, there was three of four of them there.

Defence: Can you say who they were?
Witness: No sir, I can't say definitely.

Defence: And you say that a Military Policeman came out of the hall and hit Gunner MacCumber?
Witness: Yes sir. He came running out of the hall swining his arms.

Defence: And you were on the landing outside of the dance hall?
Witness: Yes sir. I was on the right side of the landing.

Defence: Could you describe the layout of the dance hall?
Witness: I didn't take that much notice. I couldn't describe the layout.

Defence: Do you think you could point out your position on a sketch of the dance hall and the landing?

Witness: I think so sir.

Defence: (Showing witness the sketch of the hall) This is a sketch of the hall. Could you show me where you were?

Witness: I was standing right about there. (Pointing out his position)

Defence: Now you say that a Military Policeman came out and hit Gunner MacCumber?
Witness: Yes sir.

Defence: And you also say that Gunner Farrar was not beside Gunner MacCumber

Witness: Yes sir.

Prosecution: You say you belong to 'F' Troop?
Witness: Yes sir.

Prosecution: And where were you stationed?
Witness: At Martlesham Heath sir,

Prosecution: How many troops of the 4th A.A. Battery were stationed at that particular place at that thime?
Witness: Just one sir.

Prosecution: Then why is that the others say that they belong to 'C' Troop? Why don't you make up your mind what troop you belong to?
Witness: It was known as 'C' Troop at that time sir.

Prosecution: Oh, it was 'C' Troop at that time?
Witness: Yes sir.

Prosecution: And who is your troop commander?
Witness: Mister Archibald sir.

Prosecution: Was anything said to you members of the troop about the bounds of the camp?
Witness: I was one of the cooks sir, and nothing was said to me.

Prosecution: Did you hear of anything being said to the others of the troop then?
Witness: Well, there was supposed to have been something said to the rest of the troop.

Prosecution: Did you have a pass to go into Ipswich?
Witness: No sir.

Prosecution: What time did you get to the dance?
Witness: About nine-thirty.

Prosecution: Who was with you when you arrived there?
Witness: Gunner Farrar, Gunner Bulger, Gunner Moran and Gunner Thomas.

Prosecution: How did you get in to Ipswich?
Witness: In a truck sir.

Prosecution: You and Farrar and Bulger and Thomas.
Witness: Yes sir.

Prosecution: What kind of a truck was it?
Witness: It was a lumber truck.

Prosecution: Were there any other members of your battery on that truck?
Witness: There were about fifteen altogether.

Prosecution: Did you all go to the dance together?
Witness: No sir, we parted when we got into town.

Prosecution: But you all went into Ipswich together?
Witness: Yes sir.

Prosecution: You are positive about that?
Witness: Yes sir.

Prosecution: And what time did you say that you arrived there?
Witness: About nine-thirty.

Prosecution: And who did you go into the dance with?
Witness: With Gunner Farrar and Gunner Bulger sir.

Prosecution: And did anything out of the ordinary happen at the dance hall?
Witness: Not right then sir.

Prosecution: Then when did anything out of the ordingry happen that night?
Witness: I first noticed an argument on the stairway between Gunner Farrar and a sailor about a girl.

Prosecution: Did this argument start befor the dance was over or while the dance wasgoing on?

Witness: It started before the dance was finished.

Prosecution: When you first went out on that landing, who was out there on the landing?
Witness: There was quite a number on the landing.

Prosecution: Can you name anybody that was out there?
Witness: I saw Gunner Farrar there sir.

Prosecution: And where was he?
Witness: He was standing on the left of me. When I was going out it would be on my right.

Prosecution: He was standing on the right.
Witness: Yes sir. He was standing on the right of the railing going down.

Prosecution: Who was standing with Gunner Farrar?
Witness: There was a sailor standing there arguing with him.

Prosecution: Was there a Military Policeman standing with Gunner Farrar?
Witness: There was when I first came out.

Prosecution: There was one there then when you came out on to the landing?
Witness: Yes sir.

Prosecution: And who else was on this stairway at the head of the stairs?
Witness: Gunner Robinson I believe was on the landing at that time.

Prosecution: And where was he standing?
Witness: He was standing opposite Gunner Farrar.

Prosecution: And was there anybody else there?
Witness: Yes sir. Gunner MacCumber was on the left of the landing.

Prosecution: What about Gunner Moran?
Witness: I didn't notice him sir.

Prosecution: Did you see any M.P's on the landing?
Witness: There were three or four.

Prosecution: Where were they?
Witness: I could not give you their definite position. They just seemed to be standing around.

Prosecution: There were three or four M.P's. Anybody else?
Witness: There were a lot of Imperial soldiers and sailors.

Prosecution: How many?
Witness: Oh, about twenty or twenty-five.

Prosecution: How big is the landing?
Witness: Oh, I would say about twelve feet by about fifteen or twenty.

Prosecution: And you can definitely say that Gunner Robinson and Gunner MacCumber were there at that time.
Witness: I did not see them all at the same time, everybody was walking around.

Prosecution: And where did you say that all these Imperial soldiers and sailors were?
Witness: They were between me and the dance hall door.

Prosecution: And you say that all those were there when the M.P. came out of the dance hall and struck Gunner MacCumber?
Witness: Yes sir.

Prosecution: And how was it that you happened to see this?
Witness: I guess that I just happened to take more notice than I did before

Prosecution: Was there any squabble going on at that time?
Witness: No sir. There was an argument going on but that is all,

Prosecution: Between whom?

Witness: Between a sailor and Gunner Farrar.

Prosecution: Was there a Military Policeman near them at that time?
Witness: During the argument, yes sir.

Prosecution: And did you see him leave them?
Witness: No sir.

Prosecution: Why not? You were there weren't you?
Witness: I went to get my coat.

Prosecution: You were getting your coat. And was the argument that Gunner Farrar and the sailor were carrying on a loud one and did it look as if it would cause a disturbance?

Witness: No sir.

Prosecution: It was just a little argument and didn't appear to you to be of a very bad nature?

Witness: I didn't think it was one that would cause a fight.

Prosecution: Was there any other argument going on on the landing at that time?
Witness: Not that I noticed sir.

Prosecution: There wasn't any more noise than usually when a lot of people are just coming out of a dance then?

Witness: No, there wasn't any more noise or confusion than ordinarily when all of a sudden the M.P. came out of the dance hall swinging his arms and yelling 'What the Christ is going on here. I'll soon put a stop to this'

Prosecution: But there wasn't any great noise going on.
Witness: Yes, there was a bit of noise.

Prosecution: But you just said there wasn't.
Witness: There was right then.

Prosecution: But you said that there was no undue noise going on except that which would ordinarily accompany a lot of people leaving a dance hall. This was when Gunner Farrar was having his argument with the sailor. Now was there or was there not a noise going on on that landing? And who was causing it? Was Gunner Farrar?

Witness: As far as I can make out it was this M.P. that started the whole thing. The M.P. came rushing out and I seen MacCumber fall.

Prosecution: Then you did not really see the blow struck to Gunner MacCumber?
Witness: I cant swear that he hit him.

Prosecution: Who did you hit?
Witness: No-one.

Prosecution: Who hit you?
Witness: No-one.

Prosecution: Then at the moment that the Military Policeman hit MacCumber, everybody started to swing at everybody else.

Witness: It didn't seem to make any difference who was hit, they started it.

Prosecution: And while this was going on, what were you doing?
Witness: I was standing back.

Prosecution: Would I be wrong in saying that after MacCumber fell, that your whole party dived into the fight?

Witness: Yes, that's not the case.

Prosecution: I would be wrong if I said that.

Prosecution: Then everybody just got into the fight and started swinging at each other.

Witness: Yes sir. Then I and Bombardier Snider and Gunner Farrar went down stairs and then we found out that Gunner Bulger was missing.

Prosecution: What had happened to the sailor that had been arguing with Gunner Farrar?

Witness: I don't know.

Prosecution: What happened to the civilians that were on the landing?
Witness: I don' t know.

Prosecution: What happened to the Imperial Soldiers and sailors that were on the landing?
Witness: I don't know.

Prosecution: Who was left on the landing at that time then?
Witness: All those that had been on the landing had cleared out when we went down.

Prosecution: The fighting all stopped then because Farrar and Bombardier Snider and you went down. How did you go downstairs? Run?
Witness: We walked down.

Prosecution: You didn't just achieve your purpose and run down the stairs and leave the fight still going on?
Witness: No sir. There wasn't any fight then. There was another argument but no fighting.

Prosecution: Who was arguing then?
Witness: I don't know.

Prosecution: Was there any fighting on the landing after you went down stairs?
Witness: I couldnIt say.

Prosecution: Why can't you? You said that 'We just went down stairs'
Witness: I didn't take that much notice.

Prosecution: You had seen Gunner MacCumber fall and you didn't take that much notice.
Witness: I couldn't help noticing MacCumber fall because he was right in front of me then.

Prosecution: But you didn't take any notice of the other things that were going on around you.
Witness: It wasn't any of my business. After we got Gunner Farrar out

Prosecution: That's all.

Court: You were quite able to hear this argument between Gunner Farrar and the sailor?
Witness: I couldn't hear it word for word.

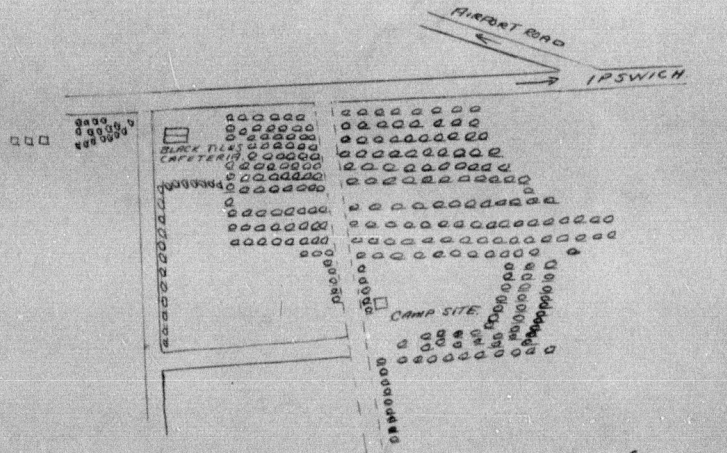
Court: The argument was over a girl was it?
Witness: I gathered that it was sir.

Court: Did you hear any of these words used?
Witness: It was a very quiet argument.

Court: Was it? Or was it? You can't tell me any more than that they were arguing over a girl, you don't know just exactly what they were arguing about?
Witness: I didn't wait there very long. I went to the cloak room to get my coat.

Court: You can't tell me any more than that. Do you usually run down stairs to keep out of trouble.
Witness: I didn't want to get mixed up in something that wasn't my business, sir.

"C" TROOP CAMP SITE (MARTLESHAM.)



J. Archibald
Lt. Col.

Exhibit A in the case of Pasco. Gnr. Farrar, W.N.

B. Buckroyde Lieut
Assistant Adjt

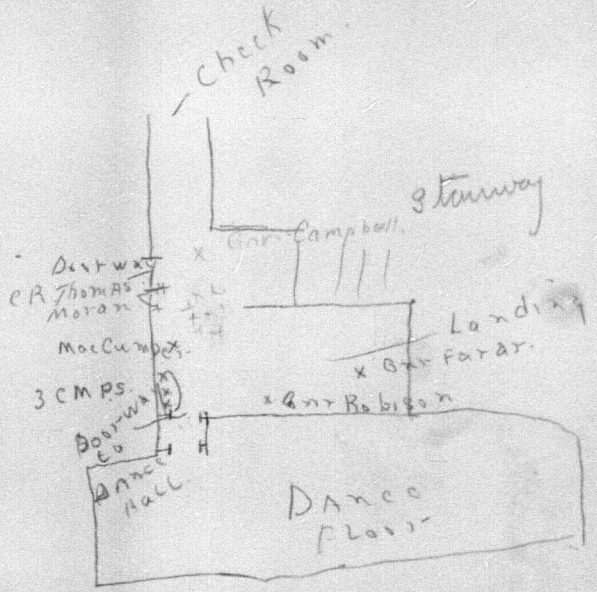


Exhibit B in the case of Pas66. Gnr. Farrar. W.N

Produced at Court
Precedent Pg 611.

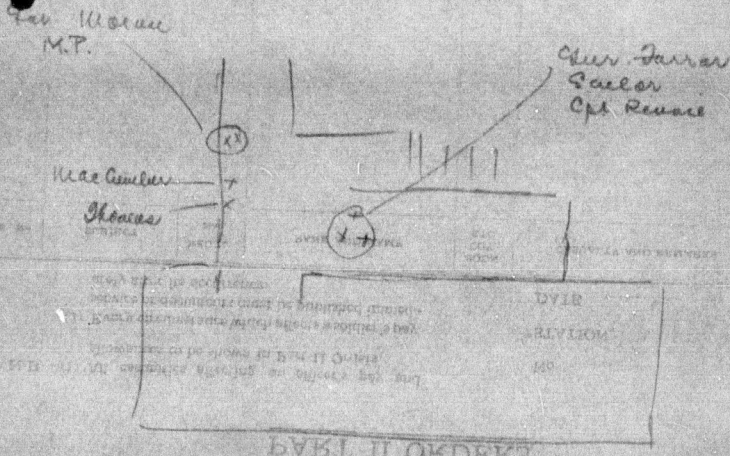


Exhibit C in the case of Pasco, Gnr. Farrar, W.N.

Description of Court by which Trial was held, and Officer signing the Charge or dispensing with Trial.	Date and place of Trial, or summary award, or of Order dispensing with Trial.	Charges upon which convicted, or in respect of which Trial was dispensed with.	Sentence of the Court or Authority disposing of the charge, or Order of the Dispensing Authority.	Punishment remitted.

I HEREBY CERTIFY that the foregoing Schedule of convictions and dispensations with trial is a true extract from the regimental books in my custody.

Signed this 28th day of April, 1941.

A Paddick Smith Lt./Adj.,
2 Light A.A. Regiment, R.C.A.

Enclosed "D"
Re P4566 Gnr Farrar W.N.
Produced (under oath) by
Prosecutor at Trial of
Pte Lindbeck Chas
Branch 4 Pty 2L

Army Form B296.

Statement as to Character and Particulars of Service of Accused.

P 4566, Gnr. FARRAR, W.N. of the 4 Lt. A.A. Bty., R.C.A.

Note.—The Regimental and Squadron, Battery or Company Conduct Sheets are to be produced in Court with this statement but are not to be annexed to the proceedings.

†See Para. 664, K.R., 1935.

*The numbers herein stated should correspond with the number of Entries in the Conduct sheets, prominence being given to the most serious offence in each entry, and to any recognised special acts of gallantry or distinguished conduct.

Instruction.—If the charge is for drunkenness the entries for drunkenness must be stated separately and dated.

1. The following is a fair and true summary of the entries in the Regimental and Squadron, Battery or Company Conduct sheets† of the accused, exclusive of convictions by a court martial or a civil court, of summary awards under Section 47 of the Army Act, and of cases in which trial has been dispensed with :—

	*Within last 12 months.		*Since Enlistment.	
For Creating a Disturbance in Barracks	NIL ~~NIL~~	times	One	times.
For Making Improper Use of Government Property.	NIL	times	One	times.
For Drunkenness	Nil	times	One	times.
Creating Disturbance in Public Place	Nil		One	
For Not Complying with with an Order	One	times	One	times.
Threatening a Superior Officer	One Time		One Time.	

Number of instances of gallantry or distinguished conduct, None

~~NIL~~

There are no entries in the Conduct sheets of the accused.

2. The accused has not been previously convicted, None

~~NIL~~

Previous convictions† of the accused by a court martial or a civil court, summary awards under Section 47 of the Army Act, and dispensations with trial under Section 73 of the Army Act, are set out in the Schedule annexed to this statement.

Wt. 42643/664 30,000 2/40 W. S. Ltd. 51—6054

3. The accused is not under sentence at the present time, No

~~No~~

The accused at the present time is under sentence for .....
..... beginning on the ..... day of .....

4. The accused has been in confinement, awaiting trial on the present charges

for No days in Civil Custody,

and 38 days in Military Custody.

Total 38 days.

Of which No days were spent in hospital.

5. The present age of the accused according to his ~~XXXXXXXXXXX~~ attestation paper is 28 Years.

6. The date of his ~~XXXXXXXXX~~ attestation specified in his ~~XXXXXXXXXXXX~~ attestation paper is 1 Sept. 1939.

7. The service which the accused is allowed to reckon towards discharge or transfer to the reserve is 1 Year, 6 Months, 24 Days.

8. The accused is entitled to deferred pay or gratuity in respect of ..... years' service.

9. The accused is entitled to reckon 1½ years' service for the purpose of determining his pension, &c.

10. The accused is in possession of, or entitled to, no military decoration or military reward [*or* is in possession of *or* entitled to

No

].

11. (*If the accused is a warrant officer.*) The accused before he was made a warrant officer last held the regimental rank of

12. (*In the case of an officer.*) The accused holds in the army the rank of , dated , and in his regiment (*or* corps *or* department) the rank of dated

13. The accused has served as a non-commissioned officer continuously, without reduction, to the present date,

		Date of Promotion.
In the rank of	years,	
In the rank of	years,	
In the rank of	years,	

(INSTRUCTION.—*If any matter in any of the above paragraphs cannot be stated from the regimental books the paragraph must be struck through.*)

The above statement (with the schedule of convictions and of cases in which trial has been dispensed with) is read, marked ....., signed by the president, and annexed to the proceedings.

Schedule of Convictions by a Court Martial or Civil Court, of summary awards under Section 47 of the Army Act, and of Cases in which Trial has been dispensed with.

Army Number, Rank and Name P4566, Gunner Farrar, W.N. of the 4 Light A.A. Battery, R.C.A.

NOTE.—*A verbatim extract from the regimental books, stating these convictions and dispensations with trial, must be inserted.*

Description of Court by which tried, or Name and Status of Officer dispensing of the charge or dispensing with Trial.	Date and place of Trial, or summary award, or of Order dispensing with Trial.	Charges upon which convicted, or in respect of which Trial was dispensed with.	Sentence of the Court or Authority disposing of the charge, or Order of the Dispensing Authority.	Punishment remitted.
		NIL		

(*Continued overleaf.*)

1 May

2/

SUMMARY OF EVIDENCE IN THE CASE OF

P.4566, Gnr. Farrar, W.N. - 4 L.A.A.Bty.

2nd Lt.A.A. Regt. R.C.A.

The accused demands that all evidence be made under oath:

1st Witness for the Prosecution (under Oath)

Lieut. James Grant Archibald, 2nd Light A.A. Regt. R.C.A. having been duly sworn states:

On the 13th March 41, at approximately 1830 hrs. I informed "C" Troop that the bounds for the camp at Marsland Heath, Martlesham, would extend as far as the cafeteria. On the 15 Mar 41, the Provost Sgt. informed me that Gnr. Farrar had been seen outside these bounds. There were no passes issued.

J.G.Archibald

The accused declines to cross-examine the witness. (Lt.G.Archibald)

2nd Witness for the Prosecution (under Oath)

No. 6456485, SGT. F. GLASSER, Corps Military Police, having been duly sworn states:

About 2300 hrs. 14 March 41, I was called by Cpl. Rennie C.M.P. to assist in the arrest of the accused. On Cpl. Rennie stating to the accused that he was going to arrest him, he replied "no yellow bellied bastards are going to arrest me" and struck him in the face. I closed with the accused and in the general mellee that ensued, I lost him. I did not see this man again that night.

F. Glasser Sgt.

(Sgt. F. Glasser)

The accused declines to cross-examine the witness.

3rd Witness for the Prosecution (under Oath)

No. 7684959, Cpl. JAMES RENNIE, Corps of Military Police, having been duly sworn states:

On the 14 Mar 41, at about 2300 hrs. I was on duty as Cpl. visiting town patrols, when I had occasion to go to the Co-Operative Dance Hall, Cox Lane, Ipswich, where I saw the accused who was in the Dance Hall speaking to a sailor in an abusive manner. I asked him to come to the side of the Dance Hall, where I asked him to stop his argument and carry on with dancing. He got very abusive. I then asked Sgt. Glasser's assistance, to arrest him. I told him I was arresting him for using obscene language when he said that "no yellow bellied bastards would arrest him." With that his fist was planted straight in Sgt. Glasser's face. Then a general melee ensued. He was taken out of our hands by other members of his party. He had a jack-knife in his hand and started to strike out, when a screen was thrown between him and myself. That was the last I saw of him.

J. Rennie Cpl C.M. Police

(Cpl. J. Rennie)

The accused declines to cross-examine the witness.

4th. Witness for the Prosecution (under Oath)

No. 7688005, L/Cpl. Albert MATCHAM, Corps of Military Police, having been duly sworn states:

At about 2300 hours on the 14 March 41, I was on duty at the Co-Operative Dance Hall, Cox Lane, Ipswich, where I saw the accused on the Dance Floor arguing with a sailor. Cpl. Rennie spoke to him and walked to the edge of the floor, and told him to carry on with the dancing in a proper manner. He became abusive and Cpl. Rennie asked the assistance of Sgt. Glasser in arresting him. He was told he was being arrested and he stated "no yellow-bellied bastards are going to arrest me," and struck Sgt. Glasser a blow on the face. He had a jackknife in his hand, and at that moment other Canadian soldiers joined him in the general melee and he disappeared from sight. That is the last I saw of him.

A. Matcham L/Cpl
(L/Cpl. Matcham, A.)

The accused declines to cross-examine the witness.

The accused having been duly warned, declines to give evidence and to call witnesses on his own behalf.

The requirements of R.P. 4 (c),(d),(e) have been duly complied with.

Taken down before me this 21st day of March, 1941, by P.6702, Sgt. A.H. Desjardins, Recorder, who was duly sworn.

R.W. Reville Lieut.

(R.W. Reville) Lieut., A/Adj.,
2 Lt. A.A. Reg't., R.C.A.

ADDITIONAL
SUMMARY OF EVIDENCE IN THE CASE OF:

P.4566, GNR. FARRAR, W.N. - 4 L.A.A.Bty.,

2 L.A.A. REGIMENT, R.C.A.

The accused demands that all evidence be made under oath;

Witness for the Prosecution (under Oath)

Lieut. James Grant Archibald, 4 L.A.A.Bty. R.C.A. having been duly sworn states:

On the 13 Mar 41, at approximately 1830 hrs., I gave orders to "C" Troop, regarding bounds at camp, at Marsland Heath, Martlesham. In these order, I said that the Black Tiles, Cafeteria was the only place in bounds. P.4566, Gnr. Farrar, W.N. was present at this time and belonged to "C" Troop. On the 14 Mar 41, the Sgt. from the Provost Corps, informed me that Gnr. Farrar had been seen at the Co-Operative Dance Hall, at Ipswich, which is about 3 miles from Marsland Heath.

(LIEUT. J.G. ARCHIBALD, R.C.A.)

The witness submits sketch as exhibit "A" ATTACHED HERETO.

Question by Officer
taking Summary of Evidence

Q. Gnr. Farran, are you satisfied to have this evidence applied against you.

A. Yes sir.

The accused having been duly warned declines to give evidence and to call witnesses on his own behalf.

The requirements of R.F. 4, (c), (d), (e), have been duly complied with.

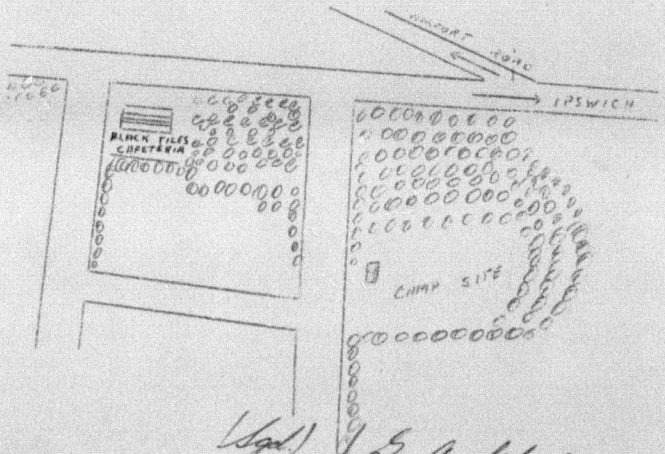
Taken down before me this 6th day of April, 1941, by F.6702, Sgt. A.H.Desjardins, in shorthand, recorder, who was duly sworn.

D.

(R.W.Reville) Lieut. A/Adjt.,
2 Light A.A. Regiment, R.C.A.

Exhibit.

"C" Troop - camp site (Marblesham)



(Sgd) J. S. Archibald, Lieut.
R.C.A.

ADDITIONAL
SUMMARY OF EVIDENCE IN THE CASE OF:

P.4566, Gnr. Farrar, W.N. - 4 L.A.A.Bty.

2 LIGHT A.A. REGIMENT, R.C.A.

The accused demands that all evidence be made under oath:

Witness for the prosecution (under oath)

L/Cpl. J. Herve, Corps Military Police having been duly sworn states:

At Ipswich, on 14 Mar 41, at about 2300 hrs. I was on town patrol with L/Cpl. A. Matcham at the Co-Operative Dance Hall, Cox Lane, Ipswich, when I saw the accused soldier being cautioned by L/Cpl. Matcham for using obscene language in the Dance Hall. I then saw Cpl. Rennie, along with Sgt. Glasser attempt to arrest the accused. He struck out at Sgt. Glasser and gave him a ferocious blow in the face. There was another soldier beside the accused who also struck Sgt. Glasser. I myself was pulled to the floor. I then saw the accused jumping over me and run down the stair with another soldier, but in the hand of the accused, there was a black-handled knife. I think the soldier shouted out "no yellow bellied bastard will arrest me."

J. Herve. L/Cpl C.M. Police
(L/Cpl. Herve. J.)

Q.1. How many M.P.'s were on duty that night?
A.1. There were 3 on duty at the dance hall.

Q.2. Was Sgt. Glasser on duty that nice.
A.2. Sgt. Glasser was on duty.

Q.3. Who wore the "blues" that night?
A.3. Sgt. Glasser.

Q.4. How is it that he did not show any credentials that he was on duty, or an M.P.
A.4. You weren't in any state to see anyone's credentials.

Q.5. How many, as you say, carried Gnr. Bulger into the little room of the Dance Hall and looked the door.
A.5. I don't know any of you by name, but I can pick the man out who ran into the Dance Hall.

Q.6. How would you say the whole thing started?
A.6. By you not listening to reason, and going away when you were told.

J. Herve L/Cpl C.M. Police
(L/Cpl. J. Herve)

The accused having been duly warned declines to give evidence and to call witnesses on his own behalf.
The requirements of R.P. 4, (c) (d) (e) have been duly complied with.
Taken down before me this 2nd day of April, 1941, by P.6702 Sgt. A.H.Desjardins, in shorthand, Recorder who was duly swo

(R.W.Reville) Lieut. A/ADJT
for, 2nd. 2 Light.A.A.Regt.R.C.A.

D.

H.Q.C. 55-F-875 CONFIDENTIAL

DEPARTMENT OF NATIONAL DEFENCE—OTTAWA, CANADA

SUBJECT

FIELD GENERAL COURT-MARTIAL

FARMER, ALBERT HENRY B-1421[illegible] [illegible]

CENTRAL REGISTRY	DATE	FROM OR TO	INITIALS	REFERRED TO	FROM OR TO	INITIALS	DATE
				(If purpose for which referred cannot be expressed on one line, enter here "With Minute".)			2-12-46

OVERSEAS COMBINED

CONFIDENTIAL
H.Q.C. 55-F-875

NOTICE

1. Files should be retained no longer than absolutely necessary. If a file is frequently needed at short intervals, it is better to R.F. it for say three days than keep it out of Central Registry indefinitely. This ensures it being completed and kept in order, and also gives other officers an opportunity to see same.
2. Central Registry should be notified whenever a file is passed direct to another branch.
3. All enclosing letters should bear the official file number.

PASS THIS FILE TO REGISTRY

RECORDED AT CMHQ IN AB 160 - 5H-129

UPAB6 (In lieu of AFA3)
40/P & P/1855 (4910)
4/3500

FIELD GENERAL COURT-MARTIAL

Convened by Order of Lt Gen E.L.M. Burns, CB, DSO, MC Comd 10 Cdn Inf Bde dated 18 Mar 45

ACCUSED.

(As to the trial of two or more charged jointly see RP 16, 71, 109. As to reasons for showing (a) permanent or confirmed rank, and (b) apprnt, A/rank or A/apprnt, if any, see AA 182, 183, fns, KR Can 308, 328, 330.)

Number.	(a) Prmnt R. (b) Apprnt, A/R or A/Apprnt.	Full Christian Names.	Surname.
B142163	Pte	Albert Henry	Farmer, A.H.

PROCEEDINGS REVIEWED

20 May 45 A.J. Brody Capt.

REVIEWING OFFICER, JAG BRANCH, C.M.H.Q.

PROCEEDINGS OF TRIAL.

Held in the Fd in (country) Holland on (date(s)) 21 Mar 45

RECORD FORM A—OPENING PROCEEDINGS AND ARRAIGNMENT.

A1. The President, Members, waiting Member, JA, if any, and Offrs under instr, if any, assemble, and the Court is closed.

(PRINTED MATTER, NOT IN ITALICS FOR GUIDANCE, WILL BE DELETED, IF NOT USED OR APPLICABLE, AND INITIALLED BY PRES OR JA. The Schedule referred to throughout is on p 4. Citations do NOT include all relevant fmn ROs. For guidance on procedure when a variation in this form arises, see form for GCM in MML pp 741 to 759. A brief record of such variation will be made and given a number having reference to appropriate or preceding para number herein. See back of Convening Order, CF A95, for oaths and instrs on how to record addresses, evidence, etc. which instrs are hereafter called "Notes". As to general provisions for conducting the trial see AA 53, RP 56, 63-70, 73, 74, 94, 103, 119, 132.)

A2. The President initials and lays before the Court the Convening Order and Charge Sheet(s) attached thereto.(1) The Court is satisfied that it is properly convened and constituted(2), accused is (~~are~~) amenable to military law, and each charge discloses an offence.(3)

(1. As to use of Summary of Evidence see RP 17 fn 6. 2. AA 49, 50, RP 105-107. 3. RP 11-13, 23, 24.)

A3. The Court is opened. The accused is (are) brought before the Court. At 10.15 hours trial commences.

A4. The Prosecutor produces a Medical Certificate that accused is (~~are~~) fit to undergo trial by court-martial.(1) ~~The Prosecutor informs the Court that accused elected to be tried by court-martial instead of being dealt with summarily by the CO.(2)~~

(1. KR Can 557. 2. AA 46(6), RP 60 fn 1. For effect see KR Can 563(c). Delete, if not applicable.

A5. President to accused: Do you object to ..... as interpreter? Ans .....

~~The Interpreter is sworn.(1)~~ Do you object to ..... as shorthand writer? Ans .....

~~The shorthand writer is sworn.(1)~~

(1. RP 72. Delete, if none employed.)

A6. The Convening Order and names of the President and Members of the Court are read to the accused.(1)

President to accused: Do you object to be tried by me as President or by any of the Members of the Court?

Ans No.(2)

(1. RP 110. 2. If no objection, waiting member retires. RP 68(B). If objection, see procedure AA 51, RP 25, 71, 18, MML p 742.)

A7. The President, Members, JA, if any, and Offrs under instr, if any, are sworn.(1) The following are the ranks, names and units of the offrs comprising the Court, etc:

President	Major F.L. Hull, 2 i/c Glengarry Regt.
Member	Capt. T.F. Harrison, Lieut. Welsh R.
Member	Capt. D.F. Burke, N.B. Rangers
Judge-Advocate	Capt. R.J. McIlraith, H.Q. 1 Cdn Army Tk.
Prosecutor	Capt. V.F. Day, HQ 2 Cdn Corps
Defending Offr	Capt. A.J.F. Roberts, HQ 8 Bde

Questions by President: Is the Prosecutor a lawyer? Ans No Is the Defending Offr a lawyer? Ans No

(1. RP 26, 27, 109, 111. List of offrs under instr will be returned separately with proceedings for information of Conv Offr.)
(2. If Pros a lawyer and Def Offr not, accused is entitled to an adjournment when RP 89 (B) and fn 2 were not followed. See DI p 3.)

A8. The accused ..... before arraignment make(s) (no) ~~no~~ plea

..... (1)

(1. If a special plea is made for separate trial on one or more charges (RP 62(E), 108), or as to the jurisdiction of the Court (RP 34, 35(A), 113), or in bar of trial (RP 36), or as to accused's mental fitness to stand trial (AA 130, RP 57), or by one of several accused charged jointly to be tried separately (RP 16, 71), such plea, the addresses made in support or against, the evidence, if any, and finding are recorded per Notes. For forms of record see references in fns to RsP cited. Insert in AB rank and name of the accused making the plea.)

A9. The accused is (are) arraigned (~~separately~~) on all charges in the charge sheet.(1) The accused does (~~not~~) not object to any charge.(2) There is no amendment to be made to the Charge Sheet.(3) The President records the pleas in Part I of the Schedule.

(1. RP 31, 112. See para 1 of Instrs p 2. When more than one Charge Sheet see RP 62; when several accused to be tried separately see RP 71(C), and use separate copies of CF A96 to record proceedings. 2. RP 32, RP 33. If otherwise, delete and make appropriate record per Notes.)

X10. The Court (~~is closed and~~) considers the Instrs on Procedure after Arraignment at top of p 2. The proceedings are continued on Record Form E.

PRESIDENT OR JA WILL INITIAL ALL DELETIONS AND ALTERATIONS.

PROCEEDINGS REVIEWED 10 Cdn Inf Bde 29 May 45

Gen Sec 8 Bde 8 Echelons

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SCHEDULE.

PART I. PLEA(S), FINDING(S) AND SENTENCE.

Accused B142163 Pte Albert Henry Farmer, A.H. of C.

Charge. (Insert "alternative" where applicable.)	Plea. (See Instrs p 2.)	Finding. (See note below.)	(Space for use as required for further charges, accused charged jointly, special findings, etc.)
1st	Guilty	Guilty	
2nd	Guilty	Guilty	
3rd			
4th			
5th			
6th			

(Note: As to findings for lesser offences see AA 56, RP 44; findings on alternative charges see MML p 483 fn 4 para 2, RP 44; special findings see RP 44 and MML p 753, and in loss of kit see RP 44 fn 6.)

~~At present under sentence for ..... beginning on (date) ..... (1)~~

(1. Insert sentence being served, or delete, if not applicable. See RP 46(A). Information should be found on MF B355 or AF B296.)

Time in confinement awaiting present trial—a total of 88 days, of which 70 days were spent in hospital.(1)

(1. See RP 46(A) fn 2. Information should be found on MF B355 or AF B296 admitted in evidence under E2.)

Sentence Awarded by the Court:

To undergo detention for nine months.

(Sgd) A.J.F. Roberts Capt. 21 Mar 45. (Sgd) E.L.M. Burns
Judge-Advocate, if any. Date awarded. President. (RP 45, 50.)

(See back of Convening Order as to assembly and disposal of record after trial.)

PART II. MINUTE WHERE CONFIRMATION RESERVED. (AA 54(5), RP 120(F), MML p 760.)

Date ..... (Sgd) ..... Commanding .....

PART III. DECISION OF CONFIRMING OFFR ON FINDING(S) AND SENTENCE.

(For duties and powers see AA 54, 57, RP 37(D) fn 6, 46(A), 51-56, 120, MML pp 759-761, KR Can 567-577. Acquittals require no confirmation and cannot be revised: AA 54(3). Sending back finding or sentence for revision by Court: AA 54(2), RP 120(G). If not confirmed, accused may be tried again: AA 157, MML p 64. Minute of confirmation or non-confirmation may be altered before promulgation: RP 53, MML p 65. Quashing after promulgation: KR Can 573. Duties and powers of reviewing offrs: AA 57, 57A, RP 53A, 54. The Confirming Offr must sign here personally. AA 172 fn 1.)

My decision on the finding(s) and sentence set forth in Part I is:

Confirmed

~~I direct that the accused be not committed to prison or detention barracks until further order.~~ (1. AA 57A. Delete if not used.)

(Sgd) J.C. Jefferson, brig.

Date 23 Mar. 45. Commanding 10 Cdn. Inf. Bde. Confirming Officer.

PART IV. PROMULGATED AND EXTRACTS TAKEN. (RP 53, KR Can 576, 577.)

Accused B142163 Pte Farmer A.H. Date 27 MAR 45 Signature of Offr. C. Russell Capt. & Adjt.

ALL DELETIONS AND ALTERATIONS WILL BE INITIALLED.

INSTRUCTIONS ON PROCEDURE AFTER ARRAIGNMENT.

1. *The accused may not plead or be found Guilty on more than one of two or more charges laid in the alternative.* (*RP* 37(*A*).) *As to withdrawal of alternative charges by Prosecutor see RP* 35(*C*). *No other charge can be withdrawn for any reason without authy from Convening Offr. If Convening Offr concurs, Court may accept plea of Guilty to lesser, etc, offence.* (*RP* 44(*H*).) *Accused may change a plea of Not Guilty to Guilty during trial.* (*RP* 38.) *As to refusing to plead or not pleading intelligibly see RP* 35(*A*). *As to plea when sentence may be death see RP* 35(*D*).

2. *The proceedings on each charge sheet* (*RP* 62) *after arraignment will be conducted as follows in the respective circumstances stated :*

I. If pleas to all charges are GUILTY, use Record Form B below.

II. If pleas to all charges are NOT GUILTY, use Record Form D on p 3.

III. If pleas to some charges are GUILTY and to other charges are NOT GUILTY and,

(a) Such mixed pleas occur when there are no alternative charges in the Charge Sheet, use Record Form C below. (*RP* 37(*A*).)

(b) Such mixed pleas occur in a set of two or more charges laid in the alternative, see RP 37 (*A*) *and fn* 2 *as to discretion of Court,* (i) *to try the accused on all such alternative charges as if he had pleaded Not Guilty thereto, or,* (ii) *to record the pleas as the findings of Court. After deciding between* (i) *and* (ii), *Court will proceed under foregoing instrs as may be appropriate to result of its decision. See MML p* 744 *Instrs* (2).

3. *As to responsibility of President to accused see RP* 59, 60(*C*) *; powers and duties of JA see RP* 103 *; duty of Prosecutor see RP* 60(*A*) (*B*) *; duty and privileges of accused and Defending Offr see RP* 60(*C*), 87(*C*), 91, 92 *; swearing and withdrawal of witnesses from Court see RP* 81, 82 *; questioning of accused see RP* 80, 87(*C*), 92(*B*), *and of witnesses see RP* 83-85 *; calling or re-calling of witnesses by Court, etc, see RP* 75-79, 86, 116 *; use of Summary of Evidence at Trial see RP* 17(*E*) *fn* 6 *; and responsibility of JA or Pres to record proceedings see RP* 94, 96.

RECORD FORM B—PROCEEDINGS ON PLEAS OF GUILTY TO ALL CHARGES.

B1. The President or JA, if any, complies with RP 35(B) by explaining to the accused the nature and meaning of the charge(s)(1), and that on his plea of Guilty there will be no regular trial but merely a consideration of the sentence to be awarded after he has been given an opportunity to make a statement in reference to the charge(s), call witnesses as to character and make an address in mitigation of punishment.(2)
(*1. RP 35 fn 3. 2. MML p 54 para 47.*)

B2. President to accused : The Court will now receive any statement you desire to make in reference to the charge(s).(1) If it appears from your statement that there are circumstances which indicate that you do not understand the effect of the plea of Guilty(2), or which show provocation or extenuation in respect of which in your interest the witnesses for the Prosecution should be examined(3), we shall advise you to change your plea to Not Guilty. In making a statement you will not be sworn or subject to cross-examination ; and anything you say will not be used in evidence against you after you change your plea. If, however, it appears to the Court that your statement affects only the amount of punishment to which you are liable, you will not be advised to change your plea and you will be given an opportunity later to prove your statement by sworn testimony, if you so desire.(4)

President to accused : Do you wish to make a statement ? Ans No Sir .....(5)
(*1. RP 37(B). 2. RP 37(D) fn 6. 3. RP 35(B) fn 5 para 3, MML p 54 para 47. 4. See para E3 of Record Form E. 5. Statement, if any, recorded per Notes.*)

B3. ~~The Court considers the accused's statement.(1) The Court decides (not) to advise accused to change his~~ (their) plea(s) of Guilty to Not Guilty on ..... charge(s). ~~The accused is (are) so informed, and he (they)~~ change(s) his (their) plea(s) on ..... charge(s). ~~Part I of the Schedule is amended accordingly.~~
(*1. Court may be closed to consider the statement. Delete whole or part not used.*)

B4. On the charge(s) to which the plea(s) of Guilty ~~is~~ (are) not changed the President records finding(s) of Guilty in Part I of the Schedule.(1)
(*1. RP 35(B). If any plea(s) is (are) changed, use Record Form C or D as appropriate.*)

B5. The Summary of Evidence is marked Ex A, initialled and read aloud by the President.(1)
(*1. If there is no Summary, or if it is inadequate, comply with RP 37(B). If there is any evidence inconsistent with any plea standing as Guilty, Court will advise accused to change such plea and, if changed to Not Guilty, try such charge(s) by use of paras D1 to D8 inclusive of Record Form D on p 3. RP 37(D).*)

B6. The accused having been found Guilty on one or more of the charges, the proceedings are concluded by using Record Form E on p 3.

RECORD FORM C—PROCEEDINGS ON MIXED PLEAS OF GUILTY AND NOT GUILTY.

C1. As to the charges on which accused pleaded NOT GUILTY the trial is continued by using paras D1 to D8 inclusive of Record Form D on p 3 before proceeding with C 2.(1)
(*1. RP 37(A) (E).*)

C2. The charges on which accused pleaded GUILTY are read to him (them) again, and the trial is continued by using paras B1 to B5 of Record Form B above.(1)
(*1. Under B5 such parts only of the Summary of Evidence are read as relate to the charges dealt with under C2. If any plea is changed to Not Guilty, trial thereon proceeds by complying with paras D1 to D8 inclusive in Record Form D on p 3 and making an appropriate record thereof on a separate sheet.*)

C3. The accused having been found Guilty on one or more of the charges, the proceedings are concluded by using Record Form E on p 3.

PRESIDENT OR JA WILL INITIAL ALL DELETIONS AND ALTERATIONS.

RECORD FORM D—PROCEEDINGS ON PLEAS OF NOT GUILTY TO ALL CHARGES.

D1. President to accused : Do you wish to apply for an adjournment on the ground that any of the rules relating to procedure before trial have not been complied with, and that you have been prejudiced thereby, or on the ground that you have not had sufficient opportunity to prepare your defence ? Ans .....(1)
(*1. If "yes", see RP 39(A) for procedure. Statement or evidence, if any, is recorded per Notes.*)

D2. The Prosecutor makes (an) (no) opening address.(1)
(*1. RP 39(B), 40(A) (B), 90, 92(C) (D). Record address per Notes, subject to RP 95(C).*)

D3. The evidence for the Prosecution is taken.(1)
(*1. RP 39(C), 114, KR Can 555. Record evidence per Notes. As to Prosecutor giving evidence himself see RP 39(D) (E).*)

D4. The Prosecution is closed.(1) The Defending Offr submits that the evidence for the Prosecution does not establish a prima facie case against the accused on the ..... charge(s).(2) The Court is closed, and considers the submission.(3) The Court is re-opened, and the President announces that the submission is disallowed on the ..... charge(s), and allowed on the ..... charge(s), and that, accordingly, the trial will proceed on the former, but the accused is (are) found Not Guilty on the latter charge(s).(4)
(*1. Delete remainder of this para, if submission not made. 2. Arguments on submission, answer and reply are recorded per Notes. 3. RP 40 fn 1. See MML p 72 paras 12-14 and p 81 para 42. 4. Delete part not used. If accused acquitted on all charges, use second alternative in para D8.*)
NB : If trial proceeds, accused must be allowed great latitude in making his defence, and the Court should not stop his defence solely on ground of irrelevance. (*RP 60(C), 114, 115.*)

D5. President to accused : You will now proceed with your defence.(1) You may, if you wish, give evidence yourself on oath as to the facts or your character or both, in which case you will be subject to cross-examination.(2) You may, however, make a statement without being sworn, and you will not be subject to cross-examination.(3) But a statement which could have been made on oath will not carry with the Court the same weight as sworn testimony.(4) You may call witnesses in your defence and as to character, whether you give evidence or make a statement or do neither.

President to accused : Do you wish to give evidence yourself as a witness, make a statement, or do neither ? Ans ..... Do you intend to call witnesses on your behalf ? Ans ..... Are they witnesses as to character only ? Ans .....
(*1. RP 115. 2. RP 40(A), see 80(D). 3. RP 40 fn 10. 4. RP 40 fns 2, 9.*)

D6. Consequent on the answers recorded in para D5 the appropriate procedure for the defence is followed.(1)
(*1. RP 114, 115, 116. For procedure see Notes on back of Convening Order, CF A95. Evidence for accused as to his character should, if in his interest, be given before the finding. See RP 46(A) fn 1, 86(C). Note the further opportunity in para E1 of Record Form E. Record per Notes addresses, statement, evidence and any summing up by the JA under RP 42, 103(e).*)

D7. The Court is closed to consider the finding(s).(1) The finding(s) of the Court is (are) recorded in Part I of the Schedule.(2) The Court is re-opened.
(*1. RP 43, 117(A). See Notes in Part I of Schedule. 2. RP 44(A).*)

D8. The President announces the finding(s), if any, of Not Guilty, and states to the accused that the finding(s) of the Court on the ..... charge(s), being subject to confirmation, will be promulgated later.(1)
Or, The President announces that the accused is found Not Guilty on all charges and is to be released forthwith, and that the proceedings are accordingly terminated. Part I of the Schedule is dated and signed.(2)
(*1. AA 54(3) (6), RP 45, 120(A). 2. AA 54(3), RP 45, 117. This alternative announcement is not applicable when there are pleas of Guilty outstanding and dealt with under Record Form B or C.*)

D9. The accused having been found Guilty on one or more of the charges, the proceedings are concluded by using Record Form E below.

RECORD FORM E—PROCEEDINGS ON CONVICTION BEFORE SENTENCE.

E1. President to accused : Do you wish to give evidence yourself or to call any witnesses as to your character ?(1)
Ans No Sir .....
(*1. If evidence has already been given by accused or his witnesses as to his character, deletn this para. RP 37(C) fn 4, 46 fn 1. Accused and witnesses are sworn. Evidence recorded per Notes.*)

E2. The Prosecutor produces Statement(s) as to Character and Particulars of Service(1), and certified true copy (~~copies~~) of Conduct Sheet(s)(2), purporting to refer to the accused, which he submits to the Defending Offr for examination, and then to the Court for admission in evidence. The Court is satisfied that these documents refer to the accused, because (i) they purport to be signed in the manner required by AA 163(l) (g) (h), and (ii) they purport to refer to (a) soldier(s) having the same number, rank, name and corps as the accused. Admitted in evidence and marked Ex B and Ex C respectively.(3)
(*1. MFB 355 or AFB 296. 2. MFM 6. 3. RP 46, KR Can 558. If above documents not produced, see RP 46 fn 1 para 1.*)

E3. President to accused : Do you wish to address the Court on the Statement(s) and Conduct Sheet(s), and in mitigation of punishment ?(1) Ans Yes by My Officer .....(2)
(*1. RP 37(C), 46(D). 2. Address, if any, recorded per Notes. Court should permit accused or his witnesses to prove on oath anything here or previously stated which would affect the amount of punishment. RP 37(F) fn 7.*)

E4. The President states that the Court is closed to consider the sentence, and that the sentence to be awarded by the Court, being subject to confirmation, will not be announced, but will be promulgated later, and the proceedings in open court are accordingly terminated.(1)
(*1. AA 54(6), RP 120(A).*)

E5. The Court considers the sentence.(1) The President records the sentence in Part I of the Schedule, which is dated and signed by him and the JA, if any.(2)
(*1. When several accused tried separately see RP 71 (D). One sentence only, comprised of the punishment or punishments laid down in AA 41, 44 and its proviso, is to be awarded to cover all charges in all charge sheets on which accused found guilty. RP 48. As to sentences see AA 44, 138, 182, RP 46-50, 69, 118, 119(A), KR Can 308, 330, 563-566, Overseas AO 309, 2323, MML p 60, 757-759. As to sentences assigned for civil offences by the law of England see AA 41(5), MML p 130. When accused already under sentence of imprisonment or detention see AA 44(1B), 68(1), KR Can 564. 2. RP 50. As to release from arrest by Confirming Offr see KR Can 567. As to assembly and dispersal of record after trial see instrs on back of Convening Order.*)

PRESIDENT OR JA WILL INITIAL ALL DELETIONS AND ALTERATIONS.

CHARGE SHEET

The accused B 142163, Pte. Albert Henry FARMER, Argyll & Sutherland Highlanders Of Canada, a spldier of the Canadian Army Overseas, is charged with:-

FIRST CHARGE
Sec 15 (1)
Army Act

WHEN ON ACTIVE SERVICE, ABSENTED HIMSELF WITHOUT LEAVE

In that he
In the field absented himself without leave from his Unit from 0730 hrs. 30 Oct 44 until apprehended by the Cdn Provost Corps in Antwerp, Belgium at 1030 hrs 9 Nov 44.
(Time absent 10 days 3 hrs)

SECOND CHARGE
Sec 15 (1)
Army Act

WHEN ON ACTIVE SERVICE ABSENTED HIMSELF WITHOUT LEAVE

In that he
In the field, while under close arrest, absented himself without leave from 2000 hrs 26 Nov 44 until apprehended by Cdn Provost Corps in Antwerp, Belgium at 2350 hrs 24 Dec 44.
(Total time absent 28 days 3 hrs 50 mins).

FE Wigle Lt-Col.,
Commanding Officer
A & S H OF C

In the Field
Feb 45

To be tried by Field General Court Martial.

(G D Wotherspoon) Lt col
A/Comd 10 Cdn Inf Bde

In the Field
18 Mar 45

CHARGE SHEET

The accused B 142163, Pte. Albert Henry FARMER, Argyll & Sutherland Highlanders Of Canada, a soldier of the Canadian Army Overseas, is charged with:-

FIRST CHARGE
Sec 15 (1)
Army Act

WHEN ON ACTIVE SERVICE, ABSENTED HIMSELF WITHOUT LEAVE

in that he
In the field absented himself without leave from his Unit from 0730 hrs. 30 Oct 44 until apprehended by the Cdn Provost Corps in Antwerp, Belgium at 1030 hrs 9 Nov 44.
(Time absent 10 days 3 hrs)

SECOND CHARGE
Sec 15 (1)
Army Act

WHEN ON ACTIVE SERVICE ABSENTED HIMSELF WITHOUT LEAVE

in that he
In the field, while under close arrest, absented himself without leave from 2000 hrs 26 Nov 44 until apprehended by Cdn Provost Corps in Antwerp, Belgium at 2350 hrs 24 Dec 44.
(Total time absent 28 days 3 hrs 50 mins).

H.E. Wigle
(H E Wigle) Lt-Col.,
Commanding Officer
A & S H OF C

In the Field
Feb 45

To be tried by Field General Court Martial.

G.D. Witherspoon
(G D Witherspoon) Lt col
A/Comd 10 Cdn Inf Bde

In the Field
18 Mar 45

G. L. Stellman

FIELD GENERAL COURT-MARTIAL

(Whether the accused to be tried is under his comd or not, a FGCM may on application to him be convened by any offr of Cdn Army Overseas, or of any other force if authorized in law, in immediate comd of troops on active service, subject to RP 105(C) and restrictions imposed by appropriate authy. AA 49, 50, RP 104-107, 114. As to the duties and privileges of the Convening Offr in dealing with the application see MML Chap V paras 20 and 23, RP 87(B).

There should be a separate Convening Order for each person to be tried separately by the same Court. RP 71(C), 109. As to separate charge sheets see RP 62, and as to separate trial on charges in the same charge sheet see RP 108. As to two or more accused charged jointly see RP 16, 109.

As to reasons for showing (a) permanent or confirmed rank, and (b) appmt, A/rank or A/appmt, if any, see AA 182, 183, fns, KR Can 308, 328, 330.)

ACCUSED.

Number.	(a) Prmnt R.	(b) Appmt, A/R or A/Appmt.	Full Christian Names.	Surname.	Unit.
B142163	Pte		Albert Henry	FARMER	A & S H of C

CONVENING ORDER.

1. Whereas complaint has been made to me, the undersigned, that the person(s) named above as the accused, being subject to military law, has ~~have~~ committed the offence(s) set forth in the Charge Sheet(s) attached and on *(date)* 18 Mar 45 endorsed by me, ~~or by an offr of my staff for me~~), " To be tried by Field General Court-Martial ".

2. And whereas I am of opinion that it is not practicable that such offence(s) should be tried by an ordinary General Court-Martial ; ~~and that it is not practicable to delay the trial for reference to a superior qualified offr.~~

(Delete part in brackets when not required for compliance with RP 105(C).)

3. I hereby convene a Field General Court-Martial to try the said person(s), and to consist of the Offrs appointed or detailed hereunder.

4. ~~I am unable to appoint (a) three Offrs to form the Court, (b) a 3rd Offr as President, for the reasons I have attached hereto.~~

(AA 49, RP 106(B), 107(A). Delete the whole or part, if not applicable.)

5. I also appoint as Judge-Advocate thereat the Offr mentioned hereunder.

(RP 106(E). Delete, if none appointed.)

PRESIDENT.

Maj	C L SHELL	29 Cdn Armd Recce Regt	
(Rank.)	*(Must be named. RP 106.)*	*(Unit.)*	

MEMBERS.

Capt	~~D F REDMOND~~ D.F. Luly	Alq R	
Capt	T F J LAWSON	Linc & Welld R	
(Rank.)	*(Named or detailed. RP 106.)*	*(Unit.)*	

WAITING MEMBER.

Lt	J S DRURY	10 Cdn Indep MG Coy	
(Rank.)	*(Named or detailed, if any. RP 106.)*	*(Unit.)*	

JUDGE-ADVOCATE.

Capt	~~D G DEAN~~ A.P. Millijan	4 Cdn Armd Div	
(Rank.)	*(Must be named, if any. RP 106.)*	*(Unit.)*	

On Active Service in the Fd

in HOLLAND *(Country.)*

J.D. Watterson — *(Signed personally. RP 105 fn 2.)* — Lt col *(Rank.)*

Dat 18 Mar 45

A/ Commanding 10 Cdn Inf Bde

Convening Officer.

CONVENING OFFR WILL INITIAL ALL DELETIONS AND ALTERATIONS

4/38A CFA 98 (In lieu of AFA 3) 40/F & B/1697 (8142) *(See overleaf for oaths and notes for use on trial.)*

G.A. Sullivan

21 March 1945

MEDICAL OFFICER'S CERTIFICATE

I Certify that No B142163, Pte Farmer A H, A & S HofC Regiment has been medically examined by me this day, 21 March 1945, and is FIT to undergo trial by Court Martial.

Signature of Medical Officer

C.K. Shell maj.

Plea for Mitigation

In the case of B 142163 Pte Albert Henry Turner.

1. Reason for going A.W.L was a pain in his back. He got no satisfaction in asking his unit M.O. I produce town 2/36A Hospital Discharge Notification which would seem to bear out this argument.
2. His previous record is good as no entries appear against him in his M & M 6.
3. Doubt of proper witness L/Cpl. McLeod in recognition and identification of accused being in civilian clothes. I would like to bring this to attention of the court so as to stop any prejudice that might be in their minds in promulgating the award.

[signature]
Capt
Defending Officer
for accused

A & D No. .....

57 Bd

2/36 A AMDB—1 In lieu of A F W 3017 40/PAS/Z (4772)

HOSPITAL DISCHARGE NOTIFICATION

To: Officer Commanding 12 C B R G (Unit)

It is notified for your information that the undermentioned was discharged from No 1 Cdn N/P Wing att 10 Cdn General Hospital, R C A M C, admitted on 24 Jan 45 194...

Disch/~~Transdol~~ 2 Cdn. Base Det. on JAN 27 1945 194...

He shall attend the first Unit Sick Parade after reporting to his Unit. This document must be passed to the Medical Officer of the Unit immediately.

Name FARMER Albert No. B142163 Rank Pte

Diagnosis Mental Retardation (code)

Paychoneurosis anxiety state (code)

(code)

M O i/c Case ES Goddard Major RCAMC

Precis Case History: Enlisted 8 Feb 43 - UK June or July 44 - to BLA

Complaints: Pain in back

This is a short, thin, immature and ineffectual looking young man of 21 He claims that he went awl in Nov 44 because he could not get any attention for the pain in his back. He was awl for 2 weeks, spent 3 weeks in a Guard Room in Ghent and was admitted to No 2 C G H on 26 Dec 44 because of back pain. Investigation and X-Ray failed to show any organic pathology. He was seen by Capt FA Fraser Psychiatrist and a diagnosis of Psychoneurosis - Hysteria in an Inadequate Personality was made. On 17 Jan 45 he was transferred to No 32 B G H and then transfered to No 1 Neuro Psychiatric Wing on 24 Jan 45.

Impression: This is a mentally retarded young man who is not sure of anything He spent at least 2 years in every grade in public school, failed in Grade VI and was sent to an auxilliary school. He has a poor work record and a poor family background. His nails are bitten short and he has a fairly marked stammer. As a soldier he would be of little value in a forward area. He has a marked startle reaction and anxiety as a result of inability to stand enemy activity.

Diagnosis: Mental Retardation.
Psychoneurosis Anxiety State.

Recommendation: Pulhems M4 S3
Discharge to Reallocation

According to the documents this soldier still has a charge of awl to face. He is fit to stand trial.

awc/

For Officer Commanding
Registrar No. 10 Can. Gen. Hos.

Summary of Evidence of B142163 Pte Albert Henry Farmer.

The Commanding officer orders that the evidence be taken on Oath.

First Witness

B70481 Sgt. S. N. Hannivan having been duly sworn states: I was the senior N.C.O. and in charge of the personnel of "B" coy who were at "A" election of A.S.14 of C. for several days covering the period 26 Oct. till about the eighth of ~~October~~ November. On what I now claim to have been the morning of 30 Oct 44 when I called the roll at 0730 hrs. I found that B142163 Pte Farmer was absent. I reported his absence to the adm. officer of "A" ~~election~~ coy. I left "A" election a few days later and have been with "F" election ever since. I did not see Pte Farmer at "A" or "F" election from the time I marked him absent till 5th Nov 45 when he returned to the company under close arrest.

~~The accused declines to question the witness~~

Q. Are you sure of the exact date & time I was marked absent

A. No I can not be positive at this time but I believe it the last day on which I have stated the exact time.

S N Hannivan

Pte A

Second Witness

Evidence obtained at Brussels.

M62258 L/Cpl Russell H. W. C.A.F. Canadian Base Troops Corps.

states: At about 1030 hrs. on the 9 Nov. 44 I was on patrol duty in Antwerp and in company with L/Cpl Watson when I saw the A/M. Soldier in Indian Air Raid Shelter him and asked him for his pass. He could not produce me. I placed him under arrest & escorted him to the Town Guard room to be detained.

I stopped

The accused declines to question the witness.

Russell

Evidence obtained at 2 C.B.R.C.
re- to escape while in custody this

Third Witness

A102703 L/Cpl. MULHERN W. having been duly sworn states: I was the N.C.O. in charge of the cell blocks at 11 Bn. #2 C.B.R.C. on the 26 th of Nov. 44. At 1700 hrs on the day in question I checked the roll and found the accused present. At 2000 hrs I checked the cell blocks and found the accused absent. I immediately reported his absence to the R.P.'s at the gate and also to the Orderly Officer. Later when examining the cell I found they had escaped by using blankets to lower his self part way to the ground following which he used an drain pipe.

Q: Are you sure of the exact date I escaped?

A: I am sure due to the fact it was the second day we were in this location.

W.E. Mulhern.

Fourth Witness

F[redacted] 5286 L/Cpl MacLeod M. J. having been duly Sworn states:— at appr of 2350 hrs 24 Dec 44 I was in Oorteluisbaai, Antwerp in company with L 27628 L/Cpl Graham B. of this Dist. when I saw a person dressed in civilian clothes who spoke with a Canadian accent. I checked him for his identity and he produced a Part II C.M.B.M. March Pass Part II [redacted] (Can) made out to the M/N soldier. He stated he was that person and that he had no further proof of his identity. I asked him if he had any authority for being in Antwerp or in civilian clothes. He answered he had no leave pass or duty pass and that he had no authority for wearing civilian clothes. I then asked him where his uniform was, he stated that it was at a cafe somewhere in Antwerp that he knew where to get it but could not describe the route to me where by I could pick it up. On further questioning he stated his unit was at Nijmegen and that he had come to Antwerp in company with Sgt Roberts of the same unit. He stated his unit was 46 Coy ORD. Sub. Park, R.C.E 1 Can Army. He also stated that in company with Sgt Roberts they had travelled to Antwerp in a Jep.

I placed him under close arrest and escorted him to the Town Guard Room. On arrival there I was informed by the N.C.O. in charge that they had no accomodations for further prisoners and so was obliged to have him escorted to the Mobile Brigade Guard Room and a body receipt was obtained.

Q. Would you recognize this person if you saw him?

A. YES if dressed in the civilian clothes he was wearing.

M J MacLeod

Q. Would you say it was me?
A. Of that I am not definite. A man in uniform has little resemblance in my mind to the same person in civilian clothes.
Q. Could you describe the clothes that ~~I am charged with stealing~~ the accused Pte Farmer was wearing
A. At this late date I am not certain.

J. J. MacLeod

The accused is warned as follows:—
Do you wish to make any statements or to give evidence on oath. You are not obliged to say anything or give evidence unless you wish to do but whatever you say or any evidence you give will be taken down in writing and may be given in evidence.

The accused declines to give any evidence or make any statement

G. H. Farmer
Pte. B142163 A. and S. H'lds.
(witness) R. A. Douglas L/Cpl.

I certify that the above evidence was taken down by me in the presence of the accused on the 5th and 6th days of Feb. 45 and that K. R. 4 (c) (d). (e) and (f) have been complied with.

J. T. Day Lieut.
Officer detailed to take the Summary

THE ARGYLL & SUTHERLAND HIGHLANDERS OF CANADA

Part 11 Orders issued by

CANADIAN SECTION GHQ 2ND ECHELON

Last Order No 58
24 Nov 44

21 ARMY GROUP

No 59
2 Dec 44

---

8 ABSENT WITHOUT LEAVE

(a) AWL from 0730 hrs 30 OCT 44 Still absent 0730 hrs 21 NOV 44
(22nd Day)
B142163 Pte Farmer A H

(Sgd) G E Marin

(G E MARIN) Lieutenant
for Officer IC
Cdn Sec GHQ 2nd Ech 21 A Gp

CERTIFIED TRUE COPY

C T Bissell

(C T Bissell) Capt & Adjt.,
for Commanding Officer
A & S H OF C

THE ARGYLL & SUTHERLAND HIGHLANDERS OF CANADA

Part 11 Orders issued by

CANADIAN SECTION GHQ 2ND ECHELON

21 ARMY GROUP

Last Order
No 55
11 Nov 44

No 56
18 Nov 44

---

5. ABSENT WITHOUT LEAVE

(a) AWL from 0730 hrs 30 Oct 44 Still absent 0730 hrs 7 Nov 44 (8th day)
B142163 Pte Farmer A H

(sgd) W A Murray
(W.A. MURRAY) Lieutenant
for Officer IC
Cdn Sec GHQ 2nd Ech 21 A Group

CERTIFIED TRUE COPY

C T Bissell

(C.T.Bissell) Capt & Adjt.,
for Commanding Officer
A & S H OF C

CERTIFICATE UNDER SECTION 163 (I) (ii) OF THE ARMY ACT.

I certify that No. B-142163 Rank PTE Name FARMER A.H. of ROYAL CANADIAN ENGINEERS 46 Coy ORD. SUB. PARK 1. CDN. ARMY Regiment was arrested in Antwerp at 2350 hrs. on date 24 DEC. 44 and at the time of his arrest he was wearing ~~Military Uniform~~ Plain Clothes.

.....Lieut.
R.O. DUNN
No.7.Cdn. Prov. Coy.
i/c Antwerp Det.

In the case of:
B I42I63
PTE. FARMER A.H.
ROYAL CANADIAN ENGINEERS
46 COY. ORD.SUB.PARK
I. C DN. ARMY

EVIDENCE

At approx.2350 hrs. 24 Dec.44 I was in ORTELIUSKAAI, ANTWERP, in company with L 27628 L/CPL.GRAHAM G. of this Det.when I saw a person dressed in civilian clothes who spoke with a Canadi an accent. I checked him for his identity and he produced a part 2 Pay Book (Cdn.) made out to the M/N soldier stated he was that person. On further questioning he admitted his Unit was stationed in Nymegen and he had come to Antwerp that day in a Jeep in company with a Sgt.Roberts of the same Unit. He could not produce any authority for being in this city or for being in civilian clothes.

I placed him in close arrest and escorted him to the Mobile Brigade Guard Room and a body receipt was obtained.

M.J. McLeod ..... L/CPL.
F 55286 McLEOD M.J.
No.7.Cdn.Prov.Coy.

I have read over and corroborate the above statement.

G. Graham ..... L/CPL
L 27628 GRAHAM G.

REMARKS

CHARGE

Army Form B 252
(See King's Regulations)

ROYAL CANADIAN ENGINEERS

Regiment / Battery / Squadron / Troop or Company

46 COY. ORD. SUB PARK
I. CDN. ARMY

CHARGE against No. B I42I63 Rank PTE.

Name FARMER, A.H.

Place ANTWERP Date of Offence 24 DEC44

OFFENCE W.O.A.S.

A.W.L. from.....until apprehended at approx. 2330 hrs. 24 Dec. 44 while wearing civilian clothes in the city of Antwerp by a member of the Cdn. Prov. Coy.

.....Lieut.
No. 7 Cdn. Prov. Coy.
i/c Antwerp Det.

Names of Witnesses:—

F 55286 L/CPL. McLEOD M.J.

L 27628 L/CPL. GRAHAM G.

Signature of O.C. Battery, Squadron, Troop or Company

Punishment Awarded

By whom Awarded

Adjutant.

P.T.O.

20188 Wt W13574-1561 2,000,000 10/42 K. & H., Ltd. G657/47.

Antwerp I2-I83

CERTIFICATE UNDER SECTION 163(1)(11) OF THE ARMY ACT.

I certify that No. B-142163 Rank Pte Name Farmer, H.H. of

B'ty. 1st S. Regt. of Canada Regiment was arrested in the field at 0.30 hrs. Hochwald

hours on (date) 9 Nov. 44 and at the time of his arrest he was wearing

Military uniform (plain clothes).

Signature of Provost Marshal, D.P.M., A.P.M., D.A.P.M. or other officer into whose custody the above named person was taken on arrest.

NOTE This certificate must be signed by the officer into whose custody the person was taken and not by someone for him.

SGT 1/C.
7 CDN. L. OF C. PRO SEC.
D.A.P.M. OF C. PRO COY.

CHARGE

Army Form B 252
(See King's Regulations)

HIGHLAND SOUTH. HIGH. OF CANADA. Regiment

"B" Coy. (Battery / Squadron / Troop or Company)

CHARGE against No. B- 142163 Rank PTE.

Name FARMER, H.H.

Place Antwerp Date of Offence 9 Nov. 44

OFFENCE W.O.A.S. Absent without leave from ? until apprehended by the Coln. Pro. Corps in Antwerp at about 10.30 hrs. on the 9 Nov 44.

Names of Witnesses:—

H/C. WATSON, } 7 Coln Lof C. Pro. Sec.
" ROSSELL } 2 " Lof C. Pro. Coy.

Signature of O.C. Battery, Squadron, Troop or Company .....

Punishment Awarded .....

By whom Awarded .....

.....
Adjutant.

30188. Wt.W31374/1961. 2,000,000. 12/42. K. & H., Ltd. 6657/47.

P.T.O.

Statement of **EVIDENCE** in the case of
B-142163 Pte. FARMER, A.H.
"B" Coy. H & S. Highl. of Canada

Sir, At about 10.20 hrs on the 9 Nov. 44 I was on patol duty in Antwerp & in comp any with Pte. Russell when I saw the a/m soldier. I stopped him & asked him for his pass. He could not produce one. I placed him under arrest & recalled him to the Town Guard room to be detained.

Antwerp
9 Nov. 44

W.F. Watson
WATSON, W.F.

Sir, I have read over & corroborate the above statement

A.W. Russell
RUSSELL, A.W.

REMARKS

D.A/P. M.
2.C.B.R.C.

Re. BI42163. Pte Farmer A.H.
Royal Canadian Engineers.

1. Attached here, to find A.F.B.252. and ~~Certificate~~ certificate of arrest in connection with the the A/M soldier.

2. On 26 DEC. 44. Pte. Farmer was admitted to I09, Br, Gen, Hosp. Information has now been received that Pte. Farmer escaped from I09 Br.Gen.Hosp. on 3 Jan, 45.and is agian A.W.O.L.

3. Forwarded for your ~~if~~ information please.

.../.....Lieut.

R.O.Dunn.
I/C. 7 ~~P~~ Provost Coy.
Antwerp, Detachment.

File cmnb 2 & 2
antwerp 12/183

B 42163 PTE FARMER A.H.

A.W.L. FROM A.A.S.H. FIELD
Brought in to 11 Bde 13 NOV. 44
Released to sick bay 20 NOV. 44
Returned from sick bay. 23 NOV. 44
Escaped from gd. room 26 Nov. 44
approx 1800 hrs.
Brought in to gd. room from
Hospital 27 JAN. 45

MEMORANDUM

Army Form C348 (Small)
(Lifts of 50 interleaved)

Sender's Reference	Receiver's Reference	Date
S-44/CHARGES/3-48		4 Feb 49.

From: DAPM
2 CBRG.

TO: C.O.
A.Y.S. Hiflex-Fun Coy

1. Handed to B46565, Sgt Carr, R.C. a/m documents - MB #1 (Jan 49) - Antwerp Civil Police Cert. Certificate of Appt. (163(1)) - AFB.292. In response to B 142 163, Lt Farma, A.H. Received the a/m documents.

Carr Sgt.

Wood
Capt
DAPM, 2 Cdn Base Rft Gp

Wt. 67091/1295. 54,500 lfts. 4/44. W.S. [illegible] (P.W.) Ltd. [illegible]

Politiecommissariaat
(Middenafdeeling)

GEMEENTEGEVANG

De Adjunct-Politiecommissais opziener verklaart ontvangen te hebben uit de handen d

agenten Lava Maurice agent 784 Canadian Provost

der * wijk, om, op verzoek van den adjunct Canadian Provost

in het Gemeentegevang te worden opgesloten ter beschikking van Canadian Provos

1°) D. 142163 Dr FARMER R.C.E. 1re Canadian

geboren te ..... den .....

wonende ..... Antwerpen, den 25/12/44 Ou 40

SUMMARY OF EVIDENCE OF B. 142163 PTE ALBERT HENERY FARMER

Ex. "A"
A.A. Shelmerdine

The Commanding Officer orders that the evidence be taken on oath.

FIRST WITNESS

B.70481 Sgt. S.M. Hannivan of A. & S.H. Of C having been duly sworn states: I was the senior N.C.O. and in charge of the personnel of "B" Coy. who were at "A" Echelon of A.& S.H. OF C. for several days covering the period from 26 Oct.44 untill 6 or 8 Nov 44. On what I now believe to have been the morning of 30 Oct 44 when I called the roll at 0730 hrs I found that B.142163 Pte. Farmer was absent. I reported his absence to the Adm. Officer of "A" Echelon. I left "A" Echelon a few days later and have been with "F" Echelon ever since. I did not see Pte. Farmer at "A" or "F" Echelonfrom the time I marked him absent untill 5 Feb 45 when he returned to the Coy. under close arrest.

Q. Are you sure of the exact date and time I was marked absent?

A. No. I cannot be positive at this time but I believe to the best of my recollection that I have stated the correct time.

SECOND WITNESS

M.62258 L/Cpl. H.W. Russell, Canadian Provost Corps. having been duly sworn states: At about 1020 hrs on 2 Nov 44 I was on patrol duty in Antwerp area in company with L/Cpl. Watson when I saw the a/m soldier in an air raid shelter. I stopped him and asked him for his pass. He could not produce one. I placed him under arrest and escorted him to the town Guardroom to be detained.

The accused declines to question the witness.

THIRD WITNESS

A.102703 L-Cpl. W. Mulhern, having been duly sworn states: I was the N.C.O. in charge of the cell block at 11 Bn., 2 C.B.R.D. on the 28 Nov.44. At 1700 hrs on the day in question I checked the roll and found the accused present. At 2000 hrs I checked the cell block and found the accused absent. I immediately reported his absence to the R.P.s at the gate and also to the Orderly Officer. Later when examining the cell I found he had escaped by using blankets to lowerhimself part way to the ground, following which he used a drain pipe.

Q. Are you sure of the exact date I escaped?

A. I am sure due to the fact it was the second day we were in this location.

FOURTH WITNESS

F.55286 L-Cpl. M.J. MacLeod, having been duly sworn states: At approximately 2350 hrs 24 Dec 44 I was in Ortaluiskaai, Antwerp, in com any with L 27525 L/Cpl. G. Graham of this Detachment when I saw a person dressed in civilian clothes who spoke with a Canadian accent. I checked him for his identity and he produced a N.B.M. 1 Part 11 (Cdn) made out to the m/n soldier. He stated he was that person and that he had no further proof of his identity. I asked him if he had any authority for being in Antwerp or in civilian clothes. He answered he had no leave pass or duty pass and that he had no authority for wearing civilian clothes. I then asked him where his uniform was, and he stated that it was at a cafe somew ere in Antwerp, that he knew where to get it, but that he could not describe the route to me whereby I could pick it up. On further questioning he stated his unit was at Nijmegen and that he had come to Antwerp in company with a Sgt, Roberts of the same unit. He stated his unit was 46 Coy., Ord. Sub Park, R.C.E., 1 Cdn Army. He also stated that in company with Sgt. Roberts they had travelled to Antwerp in a jeep.

I placed him under close arrest and escorted him to the town Guardroom. On arrival there I was informed bu the N.C.O. in charge that they had no accomodations for further prisoners and so was obliged to have him escorted to the Mobile Brigade Guardroom and a body receipt was here obtained.

Q. Would you recognize this person if you saw him?

A. Yes, if dressed in the civilian clothes he was wearing.

Q. Would you say it was me?

A. Of that I am not definate. A man in uniform has little resemblance, in my mind, to the same person in civilian clothes.

Q. Could you describe the clothes that the accused Pte. Farmer was wearing.

A. At this late date I am not certain.

The accused is warned as follows:-

"Do you wish to make any statment or to give evidence on oath. You are not obliged to say anything or give evidence unless you wish to do so but whatever you say or any evidence you may give will be taken down in writing and may be given in evidence."

The accused declines to give any evidence or make any statment.

I certify that the above evidence was taken down by me in the presence of the accused on the 8th and 9th days of Feb.45 and that R.P. 4(c) (d) (e) and (f) have been complied with.

.....
(S.F. Day,) Lieut.
Officer detailed to
take the Summary.

ARMY FORM B.296.

Statement as to Character and Particulars of Service of Accused.

Number.	*Rank.*	*Name.*	*Regiment (or as the case may be).*
B142163	Pte	Farmer A H	A & S H OF C

1. The following is a fair and true summary of the entries in the regimental and squadron, battery or company conduct sheets† of the accused, exclusive of convictions by a court martial or a civil court, of summary awards under section 47 of the Army Act, and of cases in which trial has been dispensed with :—

NOTE.—At a trial by field general court martial this summary may be compiled from the field conduct sheet.
The conduct sheet(s) mentioned should be produced in court with this statement but not annexed to the proceedings.

† see para. 677, K.R., 1940.

* The numbers herein stated should correspond with the number of *entries* in the conduct sheets, prominence being given to the most serious offence in each entry, and to any recognised special acts of gallantry or distinguished conduct.

INSTRUCTION.—If the charge is for drunkenness the entries for drunkenness must be stated separately and dated.

	* Within last 12 months.	*Since Enlistment.
For MFM 6 is not available.	times	times.
For have requested the conduct sheet	times	times.
For from 2nd Ech.	times	times.
For	times	times.
For	times	times.

Number of instances of gallantry or distinguished conduct CTB

or

There are no entries in the conduct sheets of the accused.

2. The accused has not been previously convicted, *or*

Previous convictions† of the accused by a court martial or a civil court, summary awards under section 47 of the Army Act, and dispensations with trial under section 73 of the Army Act, are set out in the schedule annexed to this statement.

3. The accused is not under sentence at the present time, ~~or The accused is at the present time under sentence of~~ CTB
~~beginning on the CTB day of~~

4. The accused has been in confinement, awaiting trial on the present charges, for ~~No~~ Nil days in civil custody, and ~~No~~ 88 days in military custody, making a total of ~~No~~ 88 days, of which ~~No~~ 70 days were spent in hospital.

5. The present age of the accused according to his ~~record of service~~ CTB / attestation paper is 20 yrs old

6. The date of his ~~enlistment~~ / attestation specified in his ~~record of service~~ CTB / attestation paper is 9 Feb 42

7. ~~The service which the accused is allowed to reckon towards discharge or transfer to the reserve is~~ CTB

8. ~~The accused is entitled to deferred pay or gratuity in respect of service.~~ CTB

9. The accused is entitled to reckon 3 yrs, 34 days service for the purpose of determining his pension, etc.

10. The accused is ~~in possession of~~ CTB / ~~entitled to wear the~~ CTB / ~~has been awarded~~ CTB / ~~in lieu thereof~~ CTB / ~~military reward~~ (~~or is in possession of~~ / entitled to (*state any military decoration or reward*)). C V S M & Clasp

11. (*If the accused is a warrant officer.*) ~~The accused before he was made a warrant officer last held the rank and~~ CTB
~~was at~~

12. (*In the case of an officer.*) ~~The accused last held in the Army the rank of~~ CTB
~~and on his transfer to the reserve, or retirement, the rank of~~

(*23000) Wt.24000/1750 20,000 10/43 A.& E.W.Ltd. Gp.698
(28906) Wt.30994/1499 12,000 3/44 " "

Exs. "B."
A.H. Farmer

Schedule of Convictions by a Court Martial or Civil Court, of summary awards under Section 47 of the Army Act and of cases in which trial has been dispensed with of accused.

No. B142163 Rank Pte Name FARMER AH of A.S.H. of C. Regiment (or as the case may be).

(INSTRUCTION—A verbatim extract from the regimental books, stating these convictions and dispensations with trial, must be inserted.)

Description of court by which tried, or status of officer disposing of the charge or dispensing with trial	Date and place of trial, or summary award under A.A. 47, or of order dispensing with trial.	Charges upon which convicted, or in respect of which trial was dispensed with.	Sentence of the court or authority disposing of the charge, or order of the dispensing authority.	Punishment remitted.
		MFM 6 Not Available		

I HEREBY CERTIFY that the foregoing schedule of convictions and dispensations with trial is a true extract from the regimental books in my custody.

Signed this 15th day of MARCH 1945

(C T BISSELL) Capt & Adjt,
for CO, A & S H OF C

13. The accused has served as a non-commissioned officer continuously, without reduction, to the present date,

In the rank of . . . years,
In the rank of . . . years
In the rank of . . . years,

Date of Promotion.

INSTRUCTIONS—If any matter in any of the above five columns be stated from the regimental books the paragraph must be struck through, except that in the case of a trial by field general court-martial the information may be collected from such sources as are available and the paragraph concerned amended accordingly.)

No B142163 Name FARMER A H | Sqn, Battery, or Company | Corps CIC | Date of enlistment 8FEB43 | GC Badges | Service or Proficiency Pay $1.40 p.d.

MFM 6 (AFB 122) 40/P&S/136 (3438)

Date of last entry in Company Conduct Sheet | No and date of last drunk | Period not reckoning towards freedom from extra fine | Sheet No | Signature OC Company, etc | Character

Place	Date of offence	Rank	Cases of drunkenness	OFFENCE	Names of Witnesses	Punishment awarded	Date of award or of order dispensing with trial	By whom awarded	Remarks
	"			Nil					

Duplicate created from MFM# 19 Mar 45
Records of conduct in Canada not available

(J R Fenelon) Captain,
Officer IC Records "C"
Cdn Sec 2 Ech HQ 21 Army Gp

(PTO)

B142163, Pte FARMER, Albert Henry
A & S H OF C

Take notice pursuant to R.P. 76, that at your trial by Field General Court Martial, the Prosecuting Officer will produce the following evidence, in addition to that contained in the Summary Of Evidence.

(a) Certificate of apprehension certifying to the arrest of the accused at 1030 hrs 9 Nov 44.

(b) Certificate of apprehension certifying to the arrest of the accused at 2350 hrs 24 Dec 44.

(c) Certified True Copy of Part 11 Order No 56 dated 18 Nov 44.

(d) Certified True Copy of Part 11 Order No 59 dated 2 Dec 44.

C T Bissell
(C T BISSELL) Capt & Adjt.,
for Commanding Officer
A & S H OF C

I desire the Conveying Officer to detail an Officer to represent me at my forthcoming trial by Field General Court Martial.

A. H. Farmer
Signature Of Accused
Pte. B-142163 A and S.H. d/C.

I acknowledge receipt of one copy of the Summary Of Evidence.

A. H. Farmer
Signature Of Accused.

54-129

4

SCHEDULE.

PART I. PLEA(S), FINDING(S) AND SENTENCE.

Accused: B142163 Pte Albert Henry Farmer, A S H of C

Charge. (Insert " alternative " where applicable.)	Plea. (See Instrs p 2.)	Finding. (See note below.)	(Space for use as required for further charges, accused charged jointly, special findings, etc.)
1st	Guilty	Guilty	
2nd	Guilty	Guilty	
3rd			
4th			
5th			
6th			

(Note: As to findings for lesser offences see AA 56, RP 44; findings on alternative charges see MML p 483 fn 4 para 2, RP 44; special findings see RP 44 and MML p 753, and in lieu of kit see RP 44 fn 6.)

~~As present under sentence for~~ ~~beginning on (date)~~ "PM" (1)

(1. Insert sentence being served, or delete, if not applicable. See RP 46(A). Information should be found on MF B355 or AF B296.)

Time in confinement awaiting present trial—a total of 88 days, of which 40 days were spent in hospital.(1)

(1. See RP 46(A) fn 2. Information should be found on MF B355 or AF B296 admitted in evidence under E2.)

Sentence Awarded by the Court:

To undergo detention for mine months.

(Sgd) "R P Milligan" Capt — Judge-Advocate, if any. 21 Mar 45 — Date awarded. (Sgd) "A N Shell" Major — President. (RP 45, 50.)

(See back of Convening Order as to assembly and disposal of record after trial.)

PART II. MINUTE WHERE CONFIRMATION RESERVED. (AA 54(5), RP 120(F), MML p 760.)

Date ..... (Sgd) ..... Commanding .....

PART III. DECISION OF CONFIRMING OFFR ON FINDING(S) AND SENTENCE.

(For duties and powers see AA 54, 57, RP 37(D) fn 6, 46(A), 51-56, 120, MML pp 759-761, KR Can 567-577. Acquittals require no confirmation and cannot be revised: AA 54(3). Sending back finding or sentence for revision by Court: AA 54(2), RP 120(G). If not confirmed, accused may be tried again: AA 157, MML p 64. Minute of confirmation or non-confirmation may be altered before promulgation: RP 53, MML p 65. Quashing after promulgation: KR Can 573. Duties and powers of reviewing offrs: AA 57, 57A, RP 53A, 54. The Confirming Offr must sign here personally. AA 172 fn 1.)

My decision on the finding(s) and sentence set forth in Part I is:

Confirmed

~~I direct that the accused be not committed to prison or detention barracks until further orders.~~ "JCJ"

(1. AA 57A. Delete if not used.)

(Sgd) "J C Jefferson" Brig

Date 23 Mar 45 — Commanding 10 Cdn Inf Bde — Confirming Officer.

PART IV. PROMULGATED AND EXTRACTS TAKEN. (RP 53, KR Can 576, 577.)

Accused.	Date.	Signature of Offr.
B142163 Pte Farmer A H	27 Mar 45	"C T Bixell" Capt & Adjt

ALL DELETIONS AND ALTERATIONS WILL BE INITIALLED.

FIELD GENERAL COURT-MARTIAL

CFAD8 (In lieu of AFA8) 40/P & B/1698 (6144) 4/38B

Convened by Order of Lt-Col G D Wetherspoon A/ Comd 10 C I B dated 18 Mar 45

ACCUSED.

(As to the trial of two or more charged jointly see RP 16, 71, 109. As to reasons for showing (a) permanent or confirmed rank, and (b) apprnt, A/rank or A/apprnt, if any, see AA 182, 183, fns, KR Can 308, 328, 330.)

Number.	(a) Prmnt R. (b) Apprnt, A/R or A/Apprnt.	Full Christian Names.	Surname.	Unit.
B142163	Pte	Albert Henry Farmer,		A & S H of Canada

CERTIFIED TRUE COPY

W. B. Bate Maj.

Case Sec 10 Cdn Inf Bde

PROCEEDINGS OF TRIAL.

Held in the Fd in (country) HOLLAND on (date(s)) 21 Mar 45

RECORD FORM A—OPENING PROCEEDINGS AND ARRAIGNMENT. 27/61

A1. The President, Members, waiting Member, JA, if any, and Offrs under instr, if any, assemble, and the Court is closed.

(PRINTED MATTER, NOT IN ITALICS FOR GUIDANCE, WILL BE DELETED, IF NOT USED OR APPLICABLE, AND INITIALLED BY PRES OR JA. The Schedule referred to throughout is on p 4. Citations do NOT include all relevant fmn ROs. For guidance on procedure when a variation in this form arises, see form for GCM in MML pp 741 to 759. A brief record of such variation will be made and given a number having reference to appropriate or preceding para number herein. See back of Convening Order, CF A95, for oaths and instrs on how to record addresses, evidence, etc, which instrs are hereafter called "Notes". As to general provisions for conducting the trial see AA 53, RP 56, 63-70, 73, 74, 94, 103, 119, 132.)

A2. The President initials and lays before the Court the Convening Order and Charge Sheet(s) attached thereto.(1) The Court is satisfied that it is properly convened and constituted(2), accused is (are) amenable to military law, and "PM" each charge discloses an offence.(3)

(1. As to use of Summary of Evidence see RP 17 fn 6. 2. AA 49, 50, RP 105-107. 3. RP 11-13, 23, 24.)

A3. The Court is opened. The accused is (are) brought before the Court. At 1015 hours trial commences.

A4. The Prosecutor produces a Medical Certificate that accused is (are) fit to undergo trial by court-martial.(1) ~~The Prosecutor informs the Court that accused elected to be tried by court-martial instead of being dealt with summarily by the CO.(2)~~ "PM"

(1. KR Can 557. 2. AA 46(8), RP 60 fn 1. For effect see KR Can 563(c). Delete, if not applicable.

A5. President to accused: ~~Do you object to~~ ~~as interpreter?~~ ~~Ans~~

~~The interpreter is sworn.(1) Do you object to~~ ~~as shorthand-writer?~~ ~~Ans~~ "PM"

~~The shorthand-writer is sworn.(1)~~

(1. RP 72. Delete, if none employed.)

A6. The Convening Order and names of the President and Members of the Court are read to the accused.(1) President to accused: Do you object to be tried by me as President or by any of the Members of the Court?

Ans No (2)

(1. RP 110. 2. If no objection, waiting member retires. RP 68(8). If objection, see procedure AA 51, RP 25, 71, 18, MML p 742.)

A7. The President, Members, JA, if any, and Offrs under instr, if any, are sworn.(1) The following are the ranks, names and units of the offrs comprising the Court, etc:

President	MAJOR	G L SHELL	29 Cdn Armd Recce Regt
Member	~~CAPT~~	T F G LAWSON	Linc & Welld R
Member	CAPT	D F SEELY	N B Rangers
Judge-Advocate	CAPT	R P MILLIGAN	HQ 4 Cdn Armd Div
Prosecutor	CAPT	S F DAY	A & S H OF C
Defending Offr	CAPT	A J F ROBERTS	A & S H OF C

Questions by President: Is the Prosecutor a lawyer? Ans NO Is the Defending Offr a lawyer? Ans NO (2)

(1. RP 26, 27, 109, 111. List of offrs under instr will be returned separately with proceedings for information of Conv Offr.)
(2. If Pros a lawyer and Def Offr not, accused is entitled to an adjournment when RP 89 (B) and fn 2 were not followed. See D1 p 3.)

A8. The accused ---------- before arraignment make(s) (no) (a) plea. "PM" (1)

(1. If a special plea is made for separate trial on one or more charges (RP 62(E), 108), or as to the jurisdiction of the Court (RP 34, 35(A), 113), or in bar of trial (RP 36), or as to accused's mental fitness to stand trial (AA 130, RP 57), or by one of several accused charged jointly to be tried separately (RP 16, 71), such plea, the addresses made in support or against, the evidence, if any, and finding are recorded per Notes. For forms of record see references in fns to RP cited. Insert in A8 rank and name of the accused making the plea.)

14May45 jwb

A9. The accused is (are) arraigned (~~separately~~) on all charges in the charge sheet.(1) The accused does (do) "PM" not object to any charge.(2) There is no amendment to be made to the Charge Sheet.(2) The President records the pleas in Part I of the Schedule.

(1. RP 31, 112. See para 1 of Instrs p 2. When more than one Charge Sheet see RP 62; when several accused to be tried separately see RP 71(C), and use separate copies of CF A96 to record proceedings. 2. RP 32, RP 33. If otherwise, delete and make appropriate record per Notes.)

A10. The Court (~~is closed and~~) considers the Instrs on Procedure after Arraignment at top of p 2. The pro- "PM" ceedings are continued on Record Form B

PRESIDENT OR JA WILL INITIAL ALL DELETIONS AND ALTERATIONS.

INSTRUCTIONS ON PROCEDURE AFTER ARRAIGNMENT.

1. *The accused may not plead or be found Guilty on more than one of two or more charges laid in the alternative.* (*RP* 37(*A*).) *As to withdrawal of alternative charges by Prosecutor see RP* 35(*C*). *No other charge can be withdrawn for any reason without authy from Convening Offr. If Convening Offr concurs, Court may accept plea of Guilty to lesser, etc, offence.* (*RP* 44(*H*).) *Accused may change a plea of Not Guilty to Guilty during trial.* (*RP* 38.) *As to refusing to plead or not pleading intelligibly see RP* 35(*A*). *As to plea when sentence may be death see RP* 35(*D*).

2. *The proceedings on each charge sheet* (*RP* 62) *after arraignment will be conducted as follows in the respective circumstances stated :*

I. If pleas to all charges are GUILTY, use Record Form B below.

II. If pleas to all charges are NOT GUILTY, use Record Form D on p 3.

III. If pleas to some charges are GUILTY and to other charges are NOT GUILTY and,

(*a*) *Such mixed pleas occur when there are no alternative charges in the Charge Sheet, use Record Form C below.* (*RP* 37(*A*).)

(*b*) *Such mixed pleas occur in a set of two or more charges laid in the alternative, see RP* 37 (*A*) *and fn* 2 *as to discretion of Court,* (*i*) *to try the accused on all such alternative charges as if he had pleaded Not Guilty thereto, or,* (*ii*) *to record the pleas as the findings of Court. After deciding between* (*i*) *and* (*ii*), *Court will proceed under foregoing instrs as may be appropriate to result of its decision. See MML p* 744 *Instrs* (2).

3. *As to responsibility of President to accused see RP* 59, 60(*C*); *powers and duties of JA see RP* 103; *duty of Prosecutor see RP* 60(*A*) (*B*); *duty and privileges of accused and Defending Offr see RP* 60(*C*), 87(*C*), 91, 92; *swearing and withdrawal of witnesses from Court see RP* 81, 82; *questioning of accused see RP* 80, 87(*C*), 92(*B*), *and of witnesses see RP* 83-85; *calling or re-calling of witnesses by Court, etc, see RP* 75-79, 86, 116; *use of Summary of Evidence at Trial see RP* 17(*E*) *fn* 6; *and responsibility of JA or Pres to record proceedings see RP* 94, 96.

RECORD FORM B—PROCEEDINGS ON PLEAS OF GUILTY TO ALL CHARGES.

B1. The President or JA, if any, complies with RP 35(B) by explaining to the accused the nature and meaning of the charge(s)(1), and that on his plea of Guilty there will be no regular trial but merely a consideration of the sentence to be awarded after he has been given an opportunity to make a statement in reference to the charge(s), call witnesses as to character and make an address in mitigation of punishment.(2)
(*1. RP 35 fn 3. 2. MML p 54 para 47.*)

B2. President to accused : The Court will now receive any statement you desire to make in reference to the charge(s).(1) If it appears from your statement that there are circumstances which indicate that you do not understand the effect of the plea of Guilty(2), or which show provocation or extenuation in respect of which in your interest the witnesses for the Prosecution should be examined(3), we shall advise you to change your plea to Not Guilty. In making a statement you will not be sworn or subject to cross-examination ; and anything you say will not be used in evidence against you after you change your plea. If, however, it appears to the Court that your statement affects only the amount of punishment to which you are liable, you will not be advised to change your plea and you will be given an opportunity later to prove your statement by sworn testimony, if you so desire.(4)

President to accused : Do you wish to make a statement ? Ans. No Sir.(5)
(*1. RP 37(B). 2. RP 37(D) fn 6. 3. RP 35(B) fn 5 para 3, MML p 54 para 47. 4. See para E3 of Record Form E. 5. Statement, if any, recorded per Notes.*)

B3. The Court considers the accused's statement.(1) ~~The Court decides (not) to advise accused to change his (their) plea(s) of Guilty to Not Guilty on ..... charge(s). The accused is (are) so informed, and he (they) change(s) his (their) plea(s) on ..... charge(s). Part I of the Schedule is amended accordingly.~~
(*1. Court may be closed to consider the statement. Delete whole or part not used.*)

B4. On the charge(s) to which the plea(s) of Guilty is (are) not changed the President records finding(s) of Guilty in Part I of the Schedule.(1)
(*1. RP 35(B). If any plea(s) is (are) changed, use Record Form C or D as appropriate.*)

B5. The Summary of Evidence is marked Ex A., initialled and read aloud by the President.(1)
(*1. If there is no Summary, or if it is inadequate, comply with RP 37(B). If there is any evidence inconsistent with any plea standing as Guilty, Court will advise accused to change such plea and, if changed to Not Guilty, try such charge(s) by use of paras D1 to D8 inclusive of Record Form D on p 3. RP 37(D).*)

B6. The accused having been found Guilty on one or more of the charges, the proceedings are concluded by using Record Form E on p 3.

RECORD FORM C—PROCEEDINGS ON MIXED PLEAS OF GUILTY AND NOT GUILTY.

C1. As to the charges on which accused pleaded NOT GUILTY the trial is continued by using paras D1 to D8 inclusive of Record Form D on p 3 before proceeding with C 2.(1)
(*1. RP 37(A) (E).*)

C2. The charges on which accused pleaded GUILTY are read to him (them) again, and the trial is continued by using paras B1 to B5 of Record Form B above.(1)
(*1. Under B5 such parts only of the Summary of Evidence are read as relate to the charges dealt with under C2. If any plea is changed to Not Guilty, trial thereon proceeds by complying with paras D1 to D8 inclusive in Record Form D on p 3 and making an appropriate record thereof on a separate sheet.*)

C3. The accused having been found Guilty on one or more of the charges, the proceedings are concluded by using Record Form E on p 3.

PRESIDENT OR JA WILL INITIAL ALL DELETIONS AND ALTERATIONS.

Pin here Loose Sheets of Record.

RECORD FORM D—PROCEEDINGS ON PLEAS OF NOT GUILTY TO ALL CHARGES.

D1. President to accused : Do you wish to apply for an adjournment on the ground that any of the rules relating to procedure before trial have not been complied with, and that you have been prejudiced thereby, or on the ground that you have not had sufficient opportunity to prepare your defence ? Ans. ..... .(1)
(*1. If "yes", see RP 39(A) for procedure. Statement or evidence, if any, is recorded per Notes.*)

D2. The Prosecutor makes (an) (no) opening address.(1)
(*1. RP 39(B), 60(A) (B), 90, 92(C) (D). Record address per Notes, subject to RP 95(C).*)

D3. The evidence for the Prosecution is taken.(1)
(*1. RP 39(C), 114, KR Can 555. Record evidence per Notes. As to Prosecutor giving evidence himself see RP 39(D) (E).*)

D4. The Prosecution is closed.(1) The Defending Offr submits that the evidence for the Prosecution does not establish a prima facie case against the accused on the ..... charge(s).(2) The Court is closed, and considers the submission.(3) The Court is re-opened, and the President announces that the submission is disallowed on the ..... charge(s), and allowed on the ..... charge(s), and that, accordingly, the trial will proceed on the former, but the accused is (are) found Not Guilty on the latter charge(s).(4)
(*1. Delete remainder of this para, if submission not made. 2. Arguments on submission, answer and reply are recorded per Notes. 3. RP 40 fn 1. See MML p 72 paras 12-14 and p 81 para 42. 4. Delete part not used. If accused acquitted on all charges, use second alternative in para D8.*)
NB : If trial proceeds, accused must be allowed great latitude in making his defence, and the Court should not stop his defence solely on ground of irrelevance. (*RP* 60(C), 114, 115.)

D5. President to accused : You will now proceed with your defence.(1) You may, if you wish, give evidence yourself on oath as to the facts or your character or both, in which case you will be subject to cross-examination.(2) You may, however, make a statement without being sworn, and you will not be subject to cross-examination.(3) But a statement which could have been made on oath will not carry with the Court the same weight as sworn testimony.(4) You may call witnesses in your defence and as to character, whether you give evidence or make a statement or do neither.

President to accused : Do you wish to give evidence yourself as a witness, make a statement, or do neither ? Ans. ..... Do you intend to call witnesses on your behalf ? Ans. ..... Are they witnesses as to character only ? Ans. .....
(*1. RP 115. 2. RP 40(A), see 80(D). 3. RP 40 fn 10. 4. RP 40 fns 2, 9.*)

D6. Consequent on the answers recorded in para D5 the appropriate procedure for the defence is followed.(1)
(*1. RP 114, 115, 116. For procedure see Notes on back of Convening Order, CF A95. Evidence for accused as to his character should, if in his interest, be given before the finding. See RP 46(A) fn 1, 86(C). Note the further opportunity in para E1 of Record Form E. Record per Notes addresses, statement, evidence and any summing up by the JA under RP 42, 103(e).*)

D7. The Court is closed to consider the finding(s).(1) The finding(s) of the Court is (are) recorded in Part I of the Schedule.(2) The Court is re-opened.
(*1. RP 43, 117(A). See Notes in Part I of Schedule. 2. RP 44(A).*)

D8. The President announces the finding(s), if any, of Not Guilty, and states to the accused that the finding(s) of the Court on the ..... charge(s), being subject to confirmation, will be promulgated later.(1)
Or, The President announces that the accused is found Not Guilty on all charges and is to be released forthwith, and that the proceedings are accordingly terminated. Part I of the Schedule is dated and signed.(2)
(*1. AA 54(3) (6), RP 45, 120(A). 2. AA 54(3), RP 45, 117. This alternative announcement is not applicable when there are pleas of Guilty outstanding and dealt with under Record Form B or C.*)

D9. The accused having been found Guilty on one or more of the charges, the proceedings are concluded by using Record Form E below.

RECORD FORM E—PROCEEDINGS ON CONVICTION BEFORE SENTENCE.

E1. President to accused : Do you wish to give evidence yourself or to call any witnesses as to your character ?(1)
Ans. No Sir.
(*1. If evidence has already been given by accused or his witnesses as to his character, delete this para. RP 37(C) fn 4, 46 fn 1. Accused and witnesses are sworn. Evidence recorded per Notes.*)

E2. The Prosecutor produces Statement(s) as to Character and Particulars of Service(1), and certified true copy (copies) of Conduct Sheet(s)(2), purporting to refer to the accused, which he submits to the Defending Offr for examination, and then to the Court for admission in evidence. The Court is satisfied that these documents refer to the accused, because (i) they purport to be signed in the manner required by AA 163(l) (g) (h), and (ii) they purport to refer to (a) soldier(s) having the same number, rank, name and corps as the accused. Admitted in evidence and marked Ex B and Ex C respectively.(3)
(*1. MFB 355 or AFB 296. 2. MFM 6. 3. RP 46, KR Can 558. If above documents not produced, see RP 46 fn 1 para 1.*)

E3. President to accused : Do you wish to address the Court on the Statement(s) and Conduct Sheet(s), and in mitigation of punishment ?(1) Ans. Yes any Def Officer .....(2)
(*1. RP 37(C), 46(D). 2. Address, if any, recorded per Notes. Court should permit accused or his witnesses to prove on oath anything here or previously stated which would affect the amount of punishment. RP 37(F) fn 7.*)

E4. The President states that the Court is closed to consider the sentence, and that the sentence to be awarded by the Court, being subject to confirmation, will not be announced, but will be promulgated later, and the proceedings in open court are accordingly terminated.(1)
(*1. AA 54(6), RP 120(A).*)

E5. The Court considers the sentence.(1) The President records the sentence in Part I of the Schedule, which is dated and signed by him and the JA, if any.(2)
(*1. When several accused tried separately see RP 71 (D). One sentence only, comprised of the punishment or punishments laid down in AA 41, 44 and its proviso, is to be awarded to cover all charges in all charge sheets on which accused found guilty. RP 48. As to sentences see AA 44, 138, 182, RP 46-50, 69, 118, 119(A), KR Can 308, 330, 563-566, Overseas RO 309, 2323, MML p 60, 757-759. As to sentences assigned for civil offences by the law of England see AA 41(5), MML p 130. When accused already under sentence of imprisonment or detention see AA 44(18), 68(1), KR Can 564. 2. RP 50. As to release from arrest by Confirming Offr see KR Can 567. As to assembly and disposal of record after trial see Instrs on back of Convening Order.*)

PRESIDENT OR JA WILL INITIAL ALL DELETIONS AND ALTERATIONS.

CHARGE SHEET

The accused B 142163, Pte Albert Henry FARMER, Argyll & Sutherland Highlanders of Canada, a soldier of the Canadian Army Overseas, is charged with:

FIRST CHARGE
Sec 15(1)
Army Act

WHEN ON ACTIVE SERVICE ABSENTED HIMSELF WITHOUT LEAVE

in that he

In the field absented himself without leave from his Unit from 0730 hrs 30 Oct 44 until apprehended by the Cdn Provost Corps in Antwerp, Belgium at 1030 hrs 9 Nov 44. (Time absent 10 days 3 hrs)

SECOND CHARGE
Sec 15(1)
Army Act

WHEN ON ACTIVE SERVICE ABSENTED HIMSELF WITHOUT LEAVE

in that he

In the field, while under close arrest absented himself without leave from 2000 hrs 26 Nov 44 until apprehended by Cdn Provost Corps in Antwerp, Belgium at 2350 hrs 24 Dec 44.

(Total time absent 28 days 3 hrs 50 mins.)

"F E Wigle"
(F E Wigle) Lt Col
Commanding Officer
A & S H OF C

In the Field
Feb 1945

To be tried by Field General Court Martial

In the Field
18 Mar 45

"G D Wotherspoon"
(G D Wotherspoon) Lt col
A/Comd 10 Cdn Inf Bde

"G L Shell" Maj

FIELD GENERAL COURT-MARTIAL

(Whether the accused to be tried is under his comd or not, a FGCM may on application to him be convened by any offr of Cdn Army Overseas, or of any other force if authorized in law, in immediate comd of troops on active service, subject to RP 105(C) and restrictions imposed by appropriate authy. AA 49, 50, RP 104-107, 114. As to the duties and privileges of the Convening Offr in dealing with the application see MML Chap V paras 20 and 23, RP 87(B).

There should be a separate Convening Order for each person to be tried separately by the same Court. RP 71(C), 109. As to separate charge sheets see RP 62, and as to separate trial on charges in the same charge sheet see RP 108. As to two or more accused charged jointly see RP 16, 109.

As to reasons for showing (a) permanent or confirmed rank, and (b) appmt, A/rank or A/appmt, if any, see AA 182, 183, fns, KR Can 308, 328, 330.)

ACCUSED.

Number.	(a) Prmnt R.	(b) Appmt, A/R or A/Appmt.	Full Christian Names.	Surname.	Unit.
B142163	Pte		Albert Henry	FARMER	A & S H of C

CONVENING ORDER.

1. Whereas complaint has been made to me, the undersigned, that the person(s) named above as the accused "GW" being subject to military law, has (~~have~~) committed the offence(s) set forth in the Charge Sheet(s) attached and on "GW"
(*date*) 18 Mar 45 endorsed by me, (~~or by an offr of my staff for me~~), "To be tried by Field General Court-Martial". "GW"

2. And whereas I am of opinion that it is not practicable that such offence(s) should be tried by an ordinary General Court-Martial; (~~and that it is not practicable to delay the trial for reference to a superior qualified offr.~~) "GW"
(Delete part in brackets when not required for compliance with RP 105(C).)

3. I hereby convene a Field General Court-Martial to try the said person(s), and to consist of the Offrs appointed or detailed hereunder. "GW"

4. ~~I am unable to appoint (a) three Offrs to form the Court, (b) a Fd Offr as President, for the reasons I have attached hereto.~~ "GW"
(AA 49, RP 106(B), 107(A). Delete the whole or part, if not applicable.)

5. I also appoint as Judge-Advocate thereat the Offr mentioned hereunder.
(RP 106(E). Delete, if none appointed.)

PRESIDENT.

(Rank.)	(Must be named. RP 106.)	(Unit.)
Maj	G L SHELL	29 Cdn Armd Recce Regt

MEMBERS.

(Rank.)	(Named or detailed. RP 106.)	(Unit.)
Capt	D F SEELY	Alq R
Capt	T F J LAWSON	Linc & Welld R

WAITING MEMBER.

(Rank.)	(Named or detailed, if any. RP 106.)	(Unit.)
Lt	J S DRURY	10 Cdn Indep MG Coy

JUDGE-ADVOCATE.

(Rank.)	(Must be named, if any. RP 106.)	(Unit.)
Capt	R P MILLIGAN	4 Cdn Armd Div

On Active Service in the Fd

in HOLLAND (*Country.*) "G W Wetherspoon" (*Signed personally. RP 105 (n 2.)*) Lt-Col (*Rank.*)

Dat 18 Mar 45 A/Commanding 10 Cdn Inf Bde
Convening Officer.

CONVENING OFFR WILL INITIAL ALL DELETIONS AND ALTERATIONS

(See overleaf for oaths and notes for use on trial.)

"G L SHell" Maj

MEDICAL OFFICER'S CERTIFICATE

(KR(Can) Para 557)

I certify that I have this day examined B142163, Pte Farmer A H

A & S HofC Regiment and in my opinion he is fit, ~~unfit~~ to undergo

trial by Court Martial.

Station

Date 21 March 1945

"D M Eyre" Capt
Medical Officer

"G L SHELL" Maj
Unit

Plea for Mitigation "DM"

In the case of B142163 Pte Albert Henry Farmer

Reason for going AWL was a pain in his back. He got no satisfaction in seeing his unit MO. I produce from 2/36A Hospital Discharge Notification which would seem to bear out this argument.

2. His previous record is good as no entries appear against him on his MFM 6.

3. Doubt of fourth witness L/Cpl M J McLeod in recognition and identification of accused being in civilian clothes. I would like to bring this to attention of the court so as to stop any prejudice that might be in their minds in promulgating the award.

"A J F Roberts" Capt

Defending officer for accused.

2/36A A M D2-1

HOSPITAL DISCHARGE NOTIFICATION

To: Officer Commanding....12 C B R G .....(Unit)

It is notified for your information that the undermentioned was discharged from No 1 Cdn N/P Wing att 10 Cdn General Hospital, RCAMC, admitted on 24 Jan 45.

Disch 12 Cdn Base Rft Bn on 27 Jan 1945

He shall attend the first Unit Sick Parade after reporting to his Unit. This document must be passed to the Medical Officer of the Unit immediately.

Name...FARMER Albert No. B142163.....Rank....Pte.....

Diagnosis...Mental Retardation...MO i/c Case ..E S Goddard Major RCAMC

Psychoneurosis anxiety state

Enlisted 8 Feb 43 - UK June or July 44 - to BLA

Precis Case History: Complaints: Pain in back

This is a short, thin, immature and ineffectual looking young man of 21. He claims that he went awl in Nov 44 because he could not get any attention for the pain in his back. He was awl for 2 weeks, spent 3 weeks in a Guard Room in Ghent and was admitted to No 2 C G H on 26 Dec 44 because of back pain. Investigation and X-Ray failed to show any organic pathology. He was seen by Capt FA Fraser Psychiatrist and a diagnosis of Psychoneurosis - Hysteria in an Inadequate Personality was made. On 17 Jan 45 he was transferred to No 32 BGH and then transferred to No 1 Neuro Psychiatric Wing on 24 Jan 45.

Impression: This is a mentally retarded young man who is not sure of anything. He spent at least 2 years in every grade in public school, failed in Grade VI and was sent to an auxiliary school. He has a poor work record and a poor family background. His nails are bitten short and he has a fairly marked stammer. As a soldier he would be of little value in a forward area. He has a marked startle reaction and anxiety as a result of inability to stand enemy activity.

Diagnosis: Mental Retardation
Psychoneurosis Anxiety State.

Recommendation: Pulhems M4 S3
Discharge to Reallocation

According to the documents this soldier still has a charge of awl to face. He is fit to stand trial.

for Officer Commanding
"C Williams" Major
Registrar No 10 Can Gen Hosp

THE ARGYLL & SUTHERLAND HIGHLANDERS OF CANADA
Part II Orders issued by

Last Order No 58
24 Nov 44

CANADIAN SECTION GHQ 2ND ECHELON
21 ARMY GROUP

No 59
2 Dec 44

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8 ABSENT WITHOUT LEAVE

(a) AWL from 0730 hrs 30 OCT 44 Still absent 0730 hrs 21 NOV 44
(22nd day)
B142163 Pte Farmer A H

(sgd) G E Marin

(G E MARIN) Lieutenant
for Officer i/c
Cdn Sec GHQ 2nd Ech 21 A Gp

CERTIFIED TRUE COPY

"C T Bissell"
(C T Bissell) Capt & Adjt.,
For Commanding Officer
A & S H OF C

THE ARGYLL & SUTHERLAND HIGHLANDERS OF CANADA

Part II Orders issued by
CANADIAN SECTION GHQ 2ND ECHELON 21 A Gp

No 56
18 Nov 44

Last Order
No 55
11 Nov 44

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5. ABSENT WITHOUT LEAVE
(a) AWL from 0730 hrs 30 Oct 44 Still absent 0730 hrs 7 Nov 44 (8th day)
B142163 Pte Farmer A H

(sgd) W A Murray
(W A Murray) Lieutenant
for Officer IC
Cdn Sec BHQ 2nd Ech 21 A Group

CERTIFIED TRUE COPY

"C T Bissell"
(C T Bissell) Capt & Adjt.,
for Commanding Officer
A & S H OF C

CERTIFICATE OF ARREST IN ACCORDANCE WITH ARMY ACT SECTION 163(1)(j)

I certify that No. B142163 Rank Pte Name Farmer A H
of 46 Coy Ord Sub Park 1 Cdn Army unit was arrested at 2350
Antwerp (place) at 2350 hrs on 24 Dec 44
(date). He was dressed in ~~uniform~~/civilian clothes.

Date..... Signature of Provost Marshal, APM, or other officer into whose custody the a/m person was taken on arrest.

Signature & Rank "R O DUNN" Lieut
(R O Dunn)
Unit or appointment No 7 Cdn Prov Coy
i/c Antwerp Det.

NOTES

1. This certificate must be signed personally by the officer concerned.
2. In no circumstances may it be signed by one officer 'for' another or by anyone not holding commissioned rank.
3. In no circumstances should the place of apprehension be described as 'In the Field'. The actual place of apprehension should be stated, or if difficulty is experienced in describing the place, the map reference should be given.

CHARGE

Army Form B 252
(See King's Regulations)

ROYAL CANADIAN ENGINEERS — Regiment
46 COY ORD SUB PARK — Battery / Squadron / Troop or Company
1 CDN ARMY

CHARGE against No. B142163 Ø Rank Pte

Name Farmer A H

Place Antwerp Date of Offence 24 Dec44

OFFENCE WOAS AWL from....until apprehended at approx. 2350 hrs 24 Dec 44 while wearing civilian clothes in the city of Antwerp by a member of the Cdn Prov Coy.

Names of Witnesses :—

"R O Dunn" Lieut
No 7 Cdn Prov Coy
i/c Antwerp Det.

F55286 L/CPL McLEOD M J

L27628 L/CPL GRAHAM G

Signature of O.C. Battery, Squadron, Troop or Company

Punishment Awarded

By whom Awarded

Adjutant.

30133. Wt.W12472/969. 2,000,000. 5/42. K. & H., Ltd. G657/47.

P.T.O.

Antwerp 12-183

In the case of: B1421[illegible]
Pte Farmer A H
Royal Canadian Engineers
46 Coy Ord Sub Park
1 Cdn Army

EVIDENCE

At approx 2350 hrs 24 Dec 44 I was in ORTELIUSKAAI ANTWERP in company with L27628 L/CPL GRAHAM G of this Det when I saw a person dressed in civilian clothes who spoke with a Canadian accent. I checked him for his identity and he produced a part 2 Pay Book (Cdn) made out to the M/N soldier stated he was tha person. On further questioning he admitted his Unit was stationed in Nymegen and he had come to Antwerp that day in a Jeep in company with a Sgt Roberts of the same Unit. He could not produce any authority for being in this city or for being in civilian clothes.

I placed him in close arrest and escorted him to the Mobile BrigadeGuard Room and a body receipt was obtained.

"M J MacLeod" L/Cpl
F55286 McLeod M J
No 7 Cdn Prov Coy

I have read over and corroborate the above statement.

"G Graham" L/Cpl
L27628 GRAHAM G

REMARKS

CERTIFICATE OF ARREST IN ACCORDANCE WITH ARMY ACT SECTION 163(1)(j)

I certify that No B142163....Rank Pte....Name..Farmer.A.H.....

of A.&.S.H. of Canada..... unit was arested at 1930 hrs.

.....Antwerp.....(place) at 1930..hrs on..9.Nov.44

(date). He was dressed in uniform/civilian clothes.

Date..... Signature of Provost Marshal, APM, or other officer into whose custody the a/m person was taken on arrest.

Signature & Rank..." G M Giroux? " Sgt.i/c.....
7 Cdn LofC Pro Sec

Unit or appointment 2 Cdn LofC Pro Coy.....

NOTES

1. This certificate must be signed personally by the officer concerned.
2. In no circumstances may it be signed by one officer 'for' another or by anyone not holding commissioned rank.
3. In no circumstances should the place of apprehension be described as 'In the Field'. The actual place of apprehension should be stated, or if difficulty is experienced in describing the place, the map reference should be given.

CHARGE

Army Form B 252
(See King's Regulations)

Argyle & Suth High of Canada — Regiment

"B" Coy — Battery / Squadron / Troop or Company

CHARGE against No. B142163 Rank Pte

Name Farmer A H

Place Antwerp Date of Offence 9 Nov 44

OFFENCE WOAS AWL from....? until apprehended by the Cdn Pro Corps in Antwerp at about 1030 hrs on the 9 Nov 44

Names of Witnesses :—
L/C Watson 7 Cdn LofC Pro Sec
L/C Russell 2 Cdn LofC Pro Coy

Signature of O.C. Battery, Squadron, Troop or Company

Punishment Awarded

By whom Awarded

Adjutant.

30133. W1.W12472/969. 2,000,000. 5/42. K. & H., Ltd. G457/47.

P.T.O.

Statement of **EVIDENCE** in the case of
B142163 Pte Farmer A H "B" Coy A & SHigh of
Canada

Sir

At about 1030 hrs on the 9 Nov 44 I was on patrol duty in Antwerp and in company with Pt Russell when I saw the a/m soldier. I stopped him and asked him for his pass. He could not produce one. I placed him under arrest and escorted him to the Town Guard room to be detained.

Antwerp
9 Nov 44

"W F Watson"
Watson H F

Sir

I have read over and corroborate the above statement

"H W Russell"
Russell H W

REMARKS

D.A.P.M.
2 C.B.R.G.

Re B142163 Pte Farmer A H
Royal Canadian Engineers.

1. Attached hereto find AFB 252. and certificate of arrest in connection with the a/m soldier.

2. On 26 Dec 44 Pte Farmer was admitted to 109 Br Gen Hosp. Information has now been received that Pte Farmer escaped from 109 Br.Gen.Hosp. on 3 Jan 45 and is again A.W.O.L.

3. Forwarded for your information please.

"R O Dunn" Lieut
(R O Dunn)
1/c 7 Provost Coy
Antwerp, Detachment.

File with 252

Antwerp 12/183

B142163 Pte Farmer A H

AWL from A & SH Field
Brought in to 11 Bn 13 Nov 44
Released to sick bay 20 Nov 44
Returned from sick bay 23 Nov 44
Escaped from gd room 26 Nov 44
approx 1800 hrs
Brought in to gd room from
Hospital 27 Jan 45

MEMORANDUM AF C348 (small)

Sender's Reference 5-4/Charges/1-48 Receiver's Reference Date 4 Feb 45

From DAPM
2 CBRG

To: CO
A & S Highrs First Cdn Army

1. Handed to B46565, Sgt Carr, G C u/m documents

MBM 1 (Part II) - Antwerp Civil Police Cert. Certificate of App. (163(1))
AFB 252 - in respect to B142163, Pte Farmer, A H

Received the a/m documents.

"G C Carr" Sgt

"C Wood" Capt
DAPM 2 Cdn Base Rft Gp

Politiecommissariaat
(Middenafdeeling)

GEMEENTEGEVANG

De Adjunt-Politiecommissais opziener verklaart ontvangen to hebben uit de handen op agenten "Lava Maurice agent 784 Canadian Provost" der wijk, om, op verzoek van den adjunct... Canadian Provost..in het Gemeentegevang to worden opgesloten ter beschikking van ...Canadian Provost...

1) B142163 Pte Farmer RCE Lst Canadian

geboren te den

wonende

Antwerpen, den 25/12/44 te 0u 40

Roggeman Al6

SUMMARY OF EVIDENCE OF B142163 PTE ALBERT HENERY FARMER

The Commanding Officer orders that the evidence be taken on oath.

Exhibit "A"
"A H Shell"
Maj.

FIRST WITNESS

B70481 Sgt S N Hannivan of A & S H of C having been duly sworn states:

I was the senior NCO and in charge of the personnel of "B" Coy, who were at "A" Echelon of A & S H of C for several days covering the period from 26 Oct 44 until 6 or 8 Nov 44. On what I now believe to have been the morning of 30 Oct 44 when I called the roll at 0730 hrs I found that B142163 Pte Farmer was absent. I reported his absence to the Adm Officer of "A" Echelon. I left "A" Echelon a few days later and have been with "F" Echelon ever since. I did not see Pte Farmer at "A" or "F" Echelon from the time I marked him absent until 5 Feb 45 when he returned to the Coy under close arrest.

Q Are you sure of the exact date and time I was marked absent?

A No. I cannot be positive at this time but I believe to the best of my recollection that I have stated the correct time.

SECOND WITNESS

M62258 L/Cpl H W Russell, Canadian Provost Corps, having been duly sworn states:

At about 1030 hrs on 9 Nov 44 I was on patrol duty in Antwerp and in company with L/Cpl Watson when I saw the a/m soldier in an air raid shelter. I stopped him and asked him for his pass. He could not produce one. I placed him under arrest and escorted him to the town Guardroom to be detained.

The accused declines to question the witness.

THIRD WITNESS

A102703 L/Cpl W Mulhern, having been duly sworn states:

I was the NCO in charge of the cell block at 11 Bn, 2 CBRG on the 26 Nov 44. At 1700 hrs on the day in question I checked the roll and found the accused present. At 2000 hrs I checked the cell block and found the accused absent. I immediately reported his absence to the RPs at the gate and also to the Orderly Officer. Later when examining the cell I found he had escaped by using blankets to lower himself part way to the ground, following which he used a drain pipe.

Q Are you sure of the exact date I escaped?

A I am sure due to the fact it was the second day we were in this location.

FOURTH WITNESS

F55286 L/Cpl M J MacLeod, having been duly sworn states:

At approximately 2350 hrs 24 Dec 44 I was in Orteluiskaai Antwerp, in company with L27628 L/Cpl G Graham of this Detachment when I saw a person dressed in civilian clothes who spoke with a Canadian accent. I checked him for his identity and he produced a MBM 1 Part II (Cdn) made out to the m/n soldier. He stated he was that person and that he had no further proof of his identity. I asked him if he had any authority for being in Antwerp or in civilian clothes. He answered he had no leave pass or duty pass and that he had no authority for wearing civilian clothes. I then asked him where his uniform was, and he stated that it was at a cafe

somewhere in Antwerp, that he knew where to get it, but that he could not describe the route to me whereby I could pick it up. On further questioning he stated his unit was at Nijmegen and that he had come to Antwerp in company with a Sgt, Roberts of the same unit. He stated his unit was 46 Coy, Ord Sub Park, RCE, 1 Cdn Army. He also stated that in company with Sgt Roberts they had travelled to Antwerp in a jeep.

I placed him under close arrest and escorted him to the town Guardroom. On arrival there I was informed by the NCO in charge that they had no accomodations for further prisoners and so was obliged to have him escorted to the Mobile Brigade Guardroom and a body receipt was here obtained.

Q Would you recognize this person if you saw him?
A Yes, if dressed in the civilian clothes he was wearing.

Q Would you say it was me?
A Of that I am not definite. A man in uniform has little resemblance, in my mind, to the same person in civilian clothes.

Q Could you describe the clothes that the accused Pte Farmer was wearing.
A At this late date I am not certain.

The accused is warned as follows:

"Do you wish to make any statement or to give evidence on oath? You are not obliged to say anything or give evidence unless you wish to do so but whatever you say or any evidence you may give will be taken down in writing and may be given in evidence.

The accused declines to give any evidence or make any statement.

I certify that the above evidence was taken down by me in the presenceo of the accused on the 8th and 9th days of Feb 4 5 and that RP 4 (c) (d) (e) and (f) have been complied with.

(S F Day) Lieut
Officer detailed to
take the Summary

STATEMENT AS TO CHARACTER AND PARTICULARS OF SERVICE OF ACCUSED

(For Use at Trials by Field General Courts-Martial only)

Number	Rank	Name	Regiment (or as the case may be)
B142163	Pte	Farmer A.H	A.& S.H.QF.C

NOTE.- The Field Conduct Sheet is to be produced in Court with this statement but is not to be annexed to the Proceedings. The numbers herein stated should correspond with the number of entries in the Field Conduct Sheet, prominence being given to the most serious offence in each entry. If the charge is for drunkenness or absence without leave, the entries for drunkenness or absence, as the case may be, should be stated separately. Any recognized special acts of gallantry or distinguished conduct recorded on the Field Conduct Sheet should also be inserted here.

1. The following is a fair and true summary of the entries in the Field Conduct Sheet of the Accused, exclusive of convictions by a court martial or a civil court:-

For MFM 6 is not available. ..... times

For have requested the conduct sheet times

For from 2nd Ech ..... times

For .... times

2. Previous convictions of the accused by a court martial or a civil court are set out in the Schedule overleaf.

3.* ~~The accused at the present time is under sentence for~~ .....

~~beginning on the ..... day of .....~~ "CTB"

4. The accused has been awaiting trial on the present charges for NIL. days in civil custody; and for .88. days in military custody, making a total of .88.... days of which ...40. days were spent in hosp.

5. The present age of the accused is 20 yrs old

6. The date of his attestation is 9 Feb 42....

7. ~~The service which the accused has rendered to~~ "CTB" reckon is .....3. yrs. 34 days.....

8. The accused is in possession of # CVSM & CLASP

9. ~~(If the accused is a warrant officer or NCO),~~ "CTB" accused has served continuously, without reduction, to the present date -

Date of Promotion

In the substantive rank of ....

In the war substantive rank of

* Strike out if not applicable

State the military decorations (if any) held by accused.

STATEMENT AS TO CHARACTER AND PARTICULARS OF SERVICE OF ACCUSED

(For Use at Trials by Field General Courts-Martial only)

Number	Rank	Name	Regiment (or as the case may be)
B142163	Pte	Farmer A.H	A.A.S.H QF.C

NOTE.- The Field Conduct Sheet is to be produced in Court with this statement but is not to be annexed to the Proceedings. The numbers herein stated should correspond with the number of entries in the Field Conduct Sheet, prominence being given to the most serious offence in each entry. If the charge is for drunkenness or absence without leave, the entries for drunkenness or absence, as the case may be, should be stated separately. Any recognized special acts of gallantry or distinguished conduct recorded on the Field Conduct Sheet should also be inserted here.

1. The following is a fair and true summary of the entries in the Field Conduct Sheet of the Accused, exclusive of convictions by a court martial or a civil court:-

For MFM.6 is not available. ..... times

For have requested the conduct sheet times

For from 2nd Ech ..... times

For .... times

2. Previous convictions of the accused by a court martial or a civil court are set out in the Schedule overleaf.

3.* ~~The accused at the present time is under sentence for .....~~

~~beginning on the ..... day of .....~~ "CTB"

4. The accused has been awaiting trial on the present charges for NIL. days in civil custody; and for .88. days in military custody, making a total of .88.... days of which ...40. days were spent in hosp.

5. The present age of the accused is 20 yrs old

6. The date of his attestation is 9 Feb 42....

7. ~~The service which the accused is now liable to~~ "CTB"

~~reckon is~~ .....3.yrs.34 days.....

8. The accused is in possession of # CVSM & CLASP

9. (~~If the accused is a warrant officer or N.C.O.~~), "CTB" accused has served continuously, without reduction, to the present date -

	Date of Promotion
In the substantive rank of	.....
In the war substantive rank of	.....
In the acting rank of	.....

INSTRUCTION - If any matter in any of the above paragraphs cannot be stated from the regimental books the paragraph must be struck through.

* Strike out if not applicable

State the military decorations (if any) held by accused.

Army Form B.296 (War)

Ex "B"

P G L Shell" Maj

SCHEDULE OF CONVICTIONS BY A COURT - MARTIAL OR CIVIL COURT

Description of Court by which tried	Date and place of trial	Charges upon which convicted	Sentence of Court	Punishment remitted or sentence suspended
"CTB"				

MFM 6 not available

"CTB"

I HEREBY CERTIFY that the foregoing particulars, which have been extracted from the regimental books in my custody, are correct to the best of my knowledge and belief.

Signed this 15th day of March 1945

"C T Bissell"

(C T Bissell) Capt & Adjt
for CO, A & S H Of C.

No B142163 Name FARMER A H | Sqn, Battery, or Company | Corps CIC | Date of enlistment 8Feb43 | GC Badges | Service or Proficiency Pay $1.40 p.d. | MFM 6 (AFB 122) 40/P&S/136 (3)

Date of last entry in Company Conduct Sheet | No and date of last drunk | Period not reckoning towards freedom from extra fine | Sheet No | Signature OC Company, etc | Character

Place	Date of offence	Rank	Cases of drunkenness	OFFENCE	Names of Witnesses	Punishment awarded	Date of award or of order dispensing with trial	By whom awarded	Remarks
				Nil Duplicate created from MFM 4 19 Mar 45 Records of conduct in Canada not available					
Ex "C" "G L Shell" Maj				"J R Fenelon" (J R Fenelon) Captain Officer IC Records "C" Cdn Sec 2 Ech HQ 21 Army Gp					

(PTO)

10M-6-46 (8528)
M.F.H. 7078

H.Q.C. 55-F-876

CONFIDENTIAL

DEPARTMENT OF NATIONAL DEFENCE OTTAWA, CANADA

SUBJECT

FIELD GENERAL COURT-MARTIAL

FARMER, ARCHIBALD CHESTWIND [illegible] PTE.

CENTRAL REGISTRY	DATE	P.A. OR H.P.	INITIALS	REFERRED TO	FOR	INITIALS	DATE
				(If purpose for which referred cannot be answered on the line enter here "With Minute".)			2-12-46

CONFIDENTIAL
H.Q.C. 55-F-876

OVERSEAS COMBINED

NOTICE

1. This should be retained no longer than absolutely necessary. If a file is frequently needed at short intervals, it is better on H.P. for two or three days than kept out of Central Registry unduly. This ensures it being completed and kept in order, and also frees other offices for the use of the file.

2. Change of location should be notified whenever a file is passed direct to another branch.

3. Before this envelope is used for the return of a file, the minute sheet should bear the official file number.

PASS THIS FILE IN ENVELOPE

SCHEDULE.

PART I. PLEA(S), FINDING(S) AND SENTENCE.

Accused :

Charge. (Insert "alternative" where applicable.)	Plea. (See Instrs p 2.)	Finding. (See note below.)	(Space for use as required for further charges, accused charged jointly, special findings, etc.)
1st	Guilty	Guilty	
2nd			
3rd			
4th			
5th			
6th			

(Note : As to findings for lesser offences see AA 56, RP 44 ; findings on alternative charges see MML p 483 fn 4 para 2, RP 44 ; special findings see RP 44 and MML p 753, and in loss of kit see RP 44 fn 6.)

~~At present under sentence for~~ ~~beginning on (date)~~ (1)

(1. Insert sentence being served, or delete, if not applicable. See RP 46(A). Information should be found on MF B355 or AF B296.)

Time in confinement awaiting present trial—a total of 21 days, of which NIL days were spent in hospital.(1)

(1. See RP 46(A) fn 2. Information should be found on MF B355 or AF B296 admitted in evidence under E2.)

Sentence Awarded by the Court :

To undergo Detention for a period of Sixty (60) Days.

(Sgd) ..... Judge-Advocate, if any. 8 Apl/44 Date awarded. (Sgd) ..... President. (RP 45, 50.)

(See back of Convening Order as to assembly and disposal of record after trial.)

PART II. MINUTE WHERE CONFIRMATION RESERVED. (AA 54(3), RP 120(F), MML p 760.)

Date ..... (Sgd) ..... Commanding

PART III. DECISION OF CONFIRMING OFFR ON FINDING(S) AND SENTENCE.

(For duties and powers see AA 54, 57, RP 37(D) fn 6.46(A), 51-56, 120, MML pp 759-761, KR Can 567-577. Acquittals require no confirmation and cannot be revised : AA 54(2). Sending back finding or sentence for revision by Court : AA 54(2), RP 120(G). If not confirmed, accused may be tried again : AA 157, MML p 64. Minute of confirmation or non-confirmation may be altered before promulgation : RP 53, MML p 65. Quashing after promulgation : KR Can 573. Duties and powers of reviewing offrs : AA 57, 57A, RP 53A, 54. The Confirming Offr must sign here personally. AA 172 fn 1.)

My decision on the finding(s) and sentence set forth in Part I is :

Confirmed

I ~~direct that the accused be not committed to prison or detention barracks until further order~~ (1) JRA

(1. AA 57A. Delete if not used.)

(Sgd) J.E. Sager Brigadier

Date 10 Apr 44 Commanding ~~4th~~ Group. Commanding Confirming Officer. Con. Reinforcement Units.

PART IV. PROMULGATED AND EXTRACTS TAKEN. (RP 53, KR Can 576, 577.)

Accused. Date. 11 Apr 44. Signature of Offr.

F-86481 Pte Farmer, A.C. D.O. #29 d/14 Apr 44.

H.R. Pett Capt.
for O.C. 1 C.G.P.C.

ALL DELETIONS AND ALTERATIONS WILL BE INITIALLED.

ENTERED IN RECORDS OF C.M. HHH 0

FIELD GENERAL COURT-MARTIAL

CPA96 (In lieu of AFA31) 40/P & S/1698 (2864)

Convened by Order of Brigadier J.E.Sager Comd "F" Group dated 7 April 44

ACCUSED.

(As to the trial of two or more charged jointly see RP 16, 71, 109. As to reasons for showing (a) permanent or confirmed rank, and (b) appmt, A/rank or A/appmt, if any, see AA 182, 183, fns, KR Can 308, 328, 330.)

Number.	(a) Prmnt R. (b) Appmt, A/R or A/Appmt.	Full Christian Names.	Surname.	Unit.
F-86481	Pte	Archibald Chestwind	FARMER	1 C.G.P.C.

PROCEEDINGS REVIEWED
H. C. Inch Lieut
Res J
26 Apr 44
REVIEWING OFFICER, JAG BRANCH C.M.H.Q.

PROCEEDINGS OF TRIAL.

Held at the Fd in (country) England on (date(s)) 8 Apr 44

RECORD FORM A—OPENING PROCEEDINGS AND ARRAIGNMENT.

A1. The President, Members, ~~waiting Member, JA, if any~~, and Offr/ under instr, if any, assemble, and the Court is closed.

(PRINTED MATTER, NOT IN ITALICS FOR GUIDANCE, WILL BE DELETED, IF NOT USED OR APPLICABLE, AND INITIALLED BY PRES OR JA. The Schedule referred to throughout is on p 4. Citations do NOT include all relevant fnns RQs. For guidance on procedure when a variation in this form arises, see form for GCM in MML pp 741 to 759. A brief record of such variation will be made and given a number having reference to appropriate or preceding para number herein. See back of Convening Order, CF A95, for oaths and instrs on how to record addresses, evidence, etc, which instrs are hereafter called "Notes". As to general provisions for conducting the trial see AA 53, RP 56, 63-70, 73, 74, 94, 103, 119, 132.)

A2. The President initials and lays before the Court the Convening Order and Charge Sheet(s) attached thereto.(1) The Court is satisfied that it is properly convened and constituted(2), accused is ~~(are)~~ amenable to military law, and each charge discloses an offence.(3)

(1. As to use of Summary of Evidence see RP 17 fn 6. 2. AA 49, 50, RP 105-107. 3. RP 11-13, 23, 24.)

A3. The Court is opened. The accused is ~~(are)~~ brought before the Court. At 1130 hours trial commences.

A4. The Prosecutor produces a Medical Certificate that accused is ~~(are)~~ fit to undergo trial by court-martial.(1) ~~The Prosecutor informs the Court that accused elected to be tried by court-martial instead of being dealt with summarily by the CO.(2)~~

(1. KR Can 557. 2. AA 46(8), RP 60 fn 1. For effect see KR Can 563(c). Delete, if not applicable.)

~~A5. President to accused : Do you object to~~ as interpreter ? Ans

~~The Interpreter is sworn.~~(1) Do you object to Pte/~~Sgt~~ Lyndon CH as shorthand writer ? Ans No.

The shorthand writer is sworn.(2)

(1. RP 72. Delete, if none employed.)

A6. The Convening Order and names of the President and Members of the Court are read to the accused.(1)

President to accused : Do you object to be tried by me as President or by any of the Members of the Court ?

Ans No, Sir

(1. RP 110. 2. If no objection, waiting member retires. RP 68(B). If objection, see procedure AA 51, RP 25, 71, 18, MML p 742.)

A7. The President, Members, ~~JA, if any,~~ and Offr/ under instr, if any, are sworn.(1) The following are the ranks, names and units of the offrs comprising the Court, etc :

President	Lt-Col	D.L. REDMAN	N.G.C.A.V.
Member	Capt	W.A. BOCKLEY	1 C.G.P.C.
Member	Lt.	A.S. WATSON	1 C.G.P.C.
~~Judge Advocate~~			
Prosecutor	Lt.	R.B. SMALE	1 Can Gen Purpose Coy
Defending Offr	Lt.	C.B. BRODIE	1 C.A.C.R.U.

Questions by President : Is the Prosecutor a lawyer ? Ans No. Is the Defending Offr a lawyer ? Ans No.(2)

(1. RP 26, 27, 109, 111. List of offrs under instr will be returned separately with proceedings for information of Conv Offr.)
(2. If Pros a lawyer and Def Offr not, accused is entitled to an adjournment when RP 89 (B) and fn 2 were not followed. See DI p 3.)

A8. The accused ..... before arraignment make(s) (his) (a) plea

(1. If a special plea is made for separate trial on one or more charges (RP 62(E), 108), or as to the jurisdiction of the Court (RP 34, 35(A), 113), or in bar of trial (RP 36), or as to accused's mental fitness to stand trial (AA 130, RP 57), or by one of several accused charged jointly to be tried separately (RP 16, 71), such plea, the addresses made in support or against, the evidence, if any, and finding are recorded per Notes. For forms of record see references in fns to RaP cited. Insert in AB rank and name of the accused making the plea.)

A9. The accused is ~~(are)~~ arraigned ~~(separately)~~ on all charges in the charge sheet.(1) The accused does ~~(do)~~ not object to any charge.(2) There is no amendment to be made to the Charge Sheet.(3) The President records the pleas in Part I of the Schedule.

(1. RP 31, 112. See para 1 of Instrs p 2. When more than one Charge Sheet see RP 62 ; when several accused to be tried separately see RP 71(C), and use separate copies of CF A96 to record proceedings. 2. RP 32, RP 33. If otherwise, delete and make appropriate record per Notes.)

A10. The Court ~~is cleared and~~ considers the Instrs on Procedure after Arraignment at top of p 2. The proceedings are continued on Record Form B.

PRESIDENT OR JA WILL INITIAL ALL DELETIONS AND ALTERATIONS.

INSTRUCTIONS ON PROCEDURE AFTER ARRAIGNMENT.

1. *The accused may not plead or be found Guilty on more than one of two or more charges laid in the alternative (RP 37(A).) As to withdrawal of alternative charges by Prosecutor see RP 35(C). No other charge can be withdrawn for any reason without authy from Convening Offr. If Convening Offr concurs, Court may accept plea of Guilty to lesser, etc, offence. (RP 44(H).) Accused may change a plea of Not Guilty to Guilty during trial. (RP 38.) As to refusing to plead or not pleading intelligibly see RP 35(A). As to plea when sentence may be death see RP 35(D).*

2. *The proceedings on each charge sheet (RP 62) after arraignment will be conducted as follows in the respective circumstances stated:*

I. If pleas to all charges are GUILTY, use Record Form B below.

II. If pleas to all charges are NOT GUILTY, use Record Form D on p 3.

III. If pleas to some charges are GUILTY and to other charges are NOT GUILTY and,

(a) Such mixed pleas occur when there are no alternative charges in the Charge Sheet, use Record Form C below. (RP 37(A).)

(b) Such mixed pleas occur in a set of two or more charges laid in the alternative, see RP 37 (A) and fn 2 as to discretion of Court, (i) to try the accused on all such alternative charges as if he had pleaded Not Guilty thereto, or, (ii) to record the pleas as the findings of Court. After deciding between (i) and (ii), Court will proceed under foregoing instrs as may be appropriate to result of its decision. See MML p 744 Instrs (2).

3. *As to responsibility of President to accused see RP 59, 60(C); powers and duties of JA see RP 103; duty of Prosecutor see RP 60(A) (B); duty and privileges of accused and Defending Offr see RP 60(C), 87(C), 91, 92; swearing and withdrawal of witnesses from Court see RP 81, 82; questioning of accused see RP 80, 87(C), 92(B), and of witnesses see RP 83-85; calling or re-calling of witnesses by Court etc see RP 75-79, 86, 116; use of Summary of Evidence at Trial see RP 17(E) fn 6; and responsibility of JA or Pres to record proceedings see RP 94, 96.*

RECORD FORM B—PROCEEDINGS ON PLEAS OF GUILTY TO ALL CHARGES.

B1. The President ~~or JA, if any,~~ complies with RP 35(B) by explaining to the accused the nature and meaning of the charge(s)(1), and that on his plea of Guilty there will be no regular trial but merely a consideration of the sentence to be awarded after he has been given an opportunity to make a statement in reference to the charge(s), call witnesses as to character and make an address in mitigation of punishment.(2)
(1. RP 35 fn 3. 2. MML p 54 para 47.)

B2. President to accused: The Court will now receive any statement you desire to make in reference to the charge(s).(1) If it appears from your statement that there are circumstances which indicate that you do not understand the effect of the plea of Guilty(2), or which show provocation or extenuation in respect of which in your interest the witnesses for the Prosecution should be examined(3), we shall advise you to change your plea to Not Guilty. In making a statement you will not be sworn or subject to cross-examination; and anything you say will not be used in evidence against you after you change your plea. If, however, it appears to the Court that your statement affects only the amount of punishment to which you are liable, you will not be advised to change your plea and you will be given an opportunity later to prove your statement by sworn testimony, if you so desire.(4)

President to accused: Do you wish to make a statement? Ans. Yes, Sir.(5)
(1. RP 37(B). 2. RP 37(D) fn 6. 3. RP 35(B) fn 5 para 3, MML p 54 para 47. 4. See para E3 of Record Form E. 5. Statement, if any, recorded per Notes.)

B3. ~~The Court considers the accused's statement.(1) The Court decides (not) to advise accused to change his (their) plea(s) of Guilty to Not Guilty on charge(s). The accused is (are) so informed, and he (they) change(s) his (their) plea(s) on charge(s). Part I of the Schedule is amended accordingly.~~
(1. Court may be closed to consider the statement. Delete whole or part not used.)

B4. On the charge(s) to which the plea(s) of Guilty is ~~(are)~~ not changed the President records finding(s) of Guilty in Part I of the Schedule.(1)
(1. RP 35(B). If any plea(s) is (are) changed, use Record Form C or D as appropriate.)

B5. The Summary of Evidence is marked Ex....., initialled and read aloud by the President.(1)
(1. If there is no Summary, or if it is inadequate, comply with RP 37(B). If there is any evidence inconsistent with any plea standing as Guilty, Court will advise accused to change such plea and, if changed to Not Guilty, try such charge(s) by use of paras D1 to D8 inclusive of Record Form D on p 3. RP 37(D).)

B6. The accused having been found Guilty on one or more of the charges, the proceedings are concluded by using Record Form E on p 3.

RECORD FORM C—PROCEEDINGS ON MIXED PLEAS OF GUILTY AND NOT GUILTY.

C1. As to the charges on which accused pleaded NOT GUILTY the trial is continued by using paras D1 to D8 inclusive of Record Form D on p 3 before proceeding with C 2.(1)
(1. RP 37(A) (E).)

C2. The charges on which accused pleaded GUILTY are read to him (them) again, and the trial is continued by using paras B1 to B5 of Record Form B above.(1)
(1. Under B5 such parts only of the Summary of Evidence are read as relate to the charges dealt with under C2. If any plea is changed to Not Guilty, trial thereon proceeds by complying with paras D1 to D8 inclusive in Record Form D on p 3 and making an appropriate record thereof on a separate sheet.)

C3. The accused having been found Guilty on one or more of the charges, the proceedings are concluded by using Record Form E on p 3.

PRESIDENT OR JA WILL INITIAL ALL DELETIONS AND ALTERATIONS.

RECORD FORM D—PROCEEDINGS ON PLEAS OF NOT GUILTY TO ALL CHARGES.

D1. President to accused: Do you wish to apply for an adjournment on the ground that any of the rules relating to procedure before trial have not been complied with, and that you have been prejudiced thereby, or on the ground that you have not had sufficient opportunity to prepare your defence? Ans.....(1)
(1. If "yes", see RP 39(A) for procedure. Statement or evidence, if any, is recorded per Notes.)

D2. The Prosecutor makes (an) (no) opening address.(1)
(1. RP 39(B), 60(A) (B), 90, 92(C) (D). Record address per Notes, subject to RP 95(C).)

D3. The evidence for the Prosecution is taken.(1)
(1. RP 39(C), 114, KR Can 555. Record evidence per Notes. As to Prosecutor giving evidence himself see RP 39(D) (E).)

D4. The Prosecution is closed.(1) The Defending Offr submits that the evidence for the Prosecution does not establish a prima facie case against the accused on the.....charge(s).(2) The Court is closed, and considers the submission.(3) The Court is re-opened, and the President announces that the submission is disallowed on the.....charge(s), and allowed on the.....charge(s), and that, accordingly, the trial will proceed on the former, but the accused is (are) found Not Guilty on the latter charge(s).(4)
(1. Delete remainder of this para, if submission not made. 2. Arguments on submission, answer and reply are recorded per Notes. 3. RP 40 fn 1. See MML p 72 paras 12-14 and p 81 para 42. 4. Delete part not used. If accused acquitted on all charges, use second alternative in para D8.)
NB: If trial proceeds, accused must be allowed great latitude in making his defence, and the Court should not stop his defence solely on ground of irrelevance. (RP 60(C), 114, 115.)

D5. President to accused: You will now proceed with your defence.(1) You may, if you wish, give evidence yourself on oath as to the facts or your character or both, in which case you will be subject to cross-examination.(2) You may, however, make a statement without being sworn, and you will not be subject to cross-examination.(3) But a statement which could have been made on oath will not carry with the Court the same weight as sworn testimony.(4) You may call witnesses in your defence and as to character, whether you give evidence or make a statement or do neither.

President to accused: Do you wish to give evidence yourself as a witness, make a statement, or do neither?
Ans..... Do you intend to call witnesses on your behalf?
Ans..... Are they witnesses as to character only? Ans.....
(1. RP113B. 2. RP 40(A), see 80(D). 3. RP 40 fn 10. 4. RP 40 fns 2, 9.)

D6. Consequent on the answers recorded in para D5 the appropriate procedure for the defence is followed.(1)
(1. RP 114, 115, 116. For procedure see Notes on back of Convening Order, CF A95. Evidence for accused as to his character should, if in his interest, be given before the finding. See RP 46(A) fn 1, 86(C). Note the further opportunity in para E1 of Record Form E. Record per Notes addresses, statement, evidence and any summing up by the JA under RP 42, 103(e).)

D7. The Court is closed to consider the finding(s).(1) The finding(s) of the Court is (are) recorded in Part I of the Schedule.(2) The Court is re-opened.
(1. RP 43, 117(A). See Notes in Part I of Schedule. 2. RP 44(A).)

D8. The President announces the finding(s), if any, of Not Guilty, and states to the accused that the finding(s) of the Court on the.....charge(s), being subject to confirmation, will be promulgated later.(1)
Or, The President announces that the accused is found Not Guilty on all charges and is to be released forthwith, and that the proceedings are accordingly terminated. Part I of the Schedule is dated and signed.(2)
(1. AA 54(3) (6), RP 45, 120(A). 2. AA 54(3), RP 45, 117. This alternative announcement is not applicable when there are pleas of Guilty outstanding and dealt with under Record Form B or C.)

D9. The accused having been found Guilty on one or more of the charges, the proceedings are concluded by using Record Form E below.

RECORD FORM E—PROCEEDINGS ON CONVICTION BEFORE SENTENCE.

E1. President to accused: Do you wish to give evidence yourself or to call any witnesses as to your character?(1)
Ans. NO-SIR
(1. If evidence has already been given by accused or his witnesses as to his character, delete this para. RP 37(C) fn 4, 46 fn 1. Accused and witnesses are sworn. Evidence recorded per Notes.)

E2. The Prosecutor produces Statement(s) as to Character and Particulars of Service(1), and certified true copy (copies) of Conduct Sheet(s)(2), purporting to refer to the accused, which he submits to the Defending Offr for examination, and then to the Court for admission in evidence. The Court is satisfied that these documents refer to the accused, because (i) they purport to be signed in the manner required by AA 163(1) (g) (h), and (ii) they purport to refer to (a) soldier(s) having the same number, rank, name and corps as the accused. Admitted in evidence and marked Ex. B and Ex. C respectively.(3)
(1. MFB 355 or AFB 296. 2. MFM 6. 3. RP 46, KR Can 558. If above documents not produced, see RP 46 fn 1 para 1.)

E3. President to accused: Do you wish to address the Court on the Statement(s) and Conduct Sheet(s), and in mitigation of punishment?(1) Ans. Only in favour of Officers(2)
(1. RP 37(C), 46(D). 2. Address, if any, recorded per Notes. Court should permit accused or his witnesses to prove on oath anything here or previously stated which would affect the amount of punishment. RP 37(F) fn 7.)

E4. The President states that the Court is closed to consider the sentence, and that the sentence to be awarded by the Court, being subject to confirmation, will not be announced, but will be promulgated later, and the proceedings in open court are accordingly terminated.(1)
(1. AA 54(6), RP 120(A).)

E5. The Court considers the sentence.(1) The President records the sentence in Part I of the Schedule, which is dated and signed by him and the JA, if any.(2)
(1. When several accused tried separately see RP 80(D). One sentence only, comprised of the punishment or punishments laid down in AA 41, 44 and its proviso, is to be awarded to cover all charges in all charge sheets on which accused found guilty. RP 46. As to sentences see AA 44, 138, 182, RP 46-50, 69, 118, 119(A), KR Can 308, 320, 563-566, Overseas 80 309, 2323, MML p 60, 737-737. As to sentences assigned for civil offences by the law of England see AA 41(5), MML p 130. When accused already under sentence of imprisonment or detention see AA 44(18), 68(1), KR Can 564. 2. RP 50. As to release from arrest by Confirming Offr see KR Can 567. As to assembly and disposal of record after trial see instrs on back of Convening Order.)

PRESIDENT OR JA WILL INITIAL ALL DELETIONS AND ALTERATIONS.

CHARGE SHEET

The accused, F-86481 Private Archibald Chestwind FARMER, on the strength of 1 Canadian General Pioneer Company, a soldier of the Canadian Army Overseas, is charged with:

SECT 8 (2) ARMY ACT

WHILE ON ACTIVE SERVICE

Striking his Superior Officer

In that he

At Lindford, Hants, at approximately 2310 hrs, 16th March 1944, did strike with his fists, in the face and on the arms M-17326 Private (Acting Sergeant) on the strength of 5 Canadian General Pioneer Company, attached to 1 Canadian Equipment Assembly Unit.

P. Kench

(P. Kench) Capt.,
A/Officer Commanding,
1 Cdn. Gen. Pioneer Coy.

In the Field,
7th day of April,
1944.

To be tried by Field General Court Martial.

Bordon, Hants
7 April 1944

J.E. Sager
(J.E.SAGER) Brigadier
Commander "F" Group, C.R.U.

CFA95 (In lieu of AFAS)
40/P&S/1697 (2669)

FIELD GENERAL COURT-MARTIAL

(Whether the accused to be tried is under his comd or not, a FGCM may on application to him be convened by any offr of Cdn Army Overseas, or of any other force if authorized in law, in immediate comd of troops on active service, subject to RP 105(C) and restrictions imposed by appropriate authy. AA 49, 50, RP 104-107, 114. As to the duties and privileges of the Convening Offr in dealing with the application see MML Chap V paras 20 and 23, RP 87(B).

There should be a separate Convening Order for each person to be tried separately by the same Court. RP 71(C), 109. As to separate charge sheets see RP 62, and as to separate trial on charges in the same charge sheet see RP 108. As to two or more accused charged jointly see RP 16, 109.

As to reasons for showing (a) permanent or confirmed rank, and (b) appmt, A/rank or A/appmt, if any, see AA 182, 183, fns, KR Can 308, 328, 330.)

ACCUSED.

Number.	(a) Prmnt R. (b) Appmt, A/R or A/Appmt.	Full Christian Names. Surname.	Unit.
F-86481	Pte	Archibald Chestwind FARMER	1 C.G.P.C.

CONVENING ORDER.

1. Whereas complaint has been made to me, the undersigned, that the person(s) named above as the accused being subject to military law, has ~~they~~ committed the offence(s) set forth in the Charge Sheet(s) attached and on (*date*) 7 April 44 endorsed by me, (~~or on one of the said offences~~), "To be tried by Field General Court-Martial".

2. And whereas I am of opinion that it is not practicable that such offence(s) should be tried by an ordinary General Court-Martial; ~~and that it is not expedient that they should be tried by a Court of a higher formation~~

(Delete part in brackets when not required for compliance with RP 105(C).)

3. I hereby convene a Field General Court-Martial to try the said person(s), and to consist of the Offrs appointed or detailed hereunder.

4. I ~~hereby appoint as~~ President ~~of the Court~~ ~~a Fd Offr~~ for the reasons I have ~~already stated~~

(AA 49, RP 106(B), 107(A). Delete the whole or part, if not applicable.)

5. ~~I do not appoint a Judge Advocate in this case~~ the Offr mentioned hereunder.

(RP 106(E). Delete, if none appointed.)

PRESIDENT.

(Rank.)	(Must be named. RP 106.)	(Unit.)
Lt. Col.	D.L. Redman, E.D.	H.Q.C.R.U.

MEMBERS.

(Rank.)	(Named or detailed. RP 106.)	(Unit.)
A Capt	from	1 C.C.O.D.
A Lieut	from	1 C.C.O.D.

WAITING MEMBER.

(Rank.)	(Named or detailed, if any. RP 106.)	(Unit.)

JUDGE-ADVOCATE.

(Rank.)	(Must be named, if any. RP 106.)	(Unit.)

On Active Service in the Fd

in England (Country.)

Date 7 April 1944

J.E. Sager (Signed personally RP 105 fn 2.) Brigadier (Rank.)

(J.E.SAGER) Brigadier

Commanding "2nd" Group, C.R.U. Convening Officer.

CONVENING OFFR WILL INITIAL ALL DELETIONS AND ALTERATIONS

(See overleaf for oaths and notes for use on trial.)

MEDICAL OFFICER'S CERTIFICATE

K.R. (CAN) PARA 557

I certify that I have this morning examined....F.66481.....

Pte. Farmer. A.G.....of.1.Cdn. Gen. Pioneer Company..

and in my opinion he is fit ~~unfit~~ to undergo Trial by Court - Martial.

Station In the Field.....

Date...8 April 1944.....

.....
Medical Officer

Case of

.86481 Pte FARMER AC 1 CGPC.

Character Witness

B.9690 Pte MULLIGAN ME, 1 CGPC, having been duly sworn states:

Q. Have you been a witness at all before at any cases?
A. No, Sir. I have known the accused about a year and a half or two years. He is a good worker, and his disposition is good. I got along very well with him. I also know Pte Guy as well and I get along very well with him. I have heard remarks in front of Farmer that would intend to offend him on account of his colour. I have heard him being called a black bastard and a black son of a bitch.

No cross-examination.

IN THE OPINION OF THE COURT IT IS NOT NECESSARY TO COMPLY WITH RP 83(B).

THE WITNESS WITHDRAWS.

PLEA IN MITIGATION IN THE CASE OF ARCHIBALD C. FARMER

At approximately 2310 hours on the 16th day of March, 1944, Archibald Chestwind Farmer punched his Superior Officer on the proboscis! The natural assumption would be that Mr. Farmer might be a true son of Erin warming up for the glorious 17th! Such is not the case. True, Archibald Chestwind did produce a mighty one-man blitz worthy of a section of Commandos. When he entered the N.A.A.F.I. he turned that sedate and utterly respectable emporium of delectable foodstuffs into a Donnybrook.

One line in the Summary of Evidence could have been penned by Jack London or Rex Beach---"Sgt. Burgess escaped to the Company Orderly Room, and he stayed." Then Sgt. Baxter locked the N.A.A.F.I. How fortunate the lads of Lindford, Hants, to have a N.A.A.F.I. in which to revel until the midnight hour. And yet we were under the impression that these Institutes bade farewell to their bulging clients at 2130 hours.

And why did Pte. Farmer violate Section 8(2) of the Army Act? Shall I tell you?

Little did we imagine as we sang the stirring words found in the grand lines of O! Canada that we were not a Nation united in a common bond. How many of us imagined that we were not brothers from Coast to Coast? Then came the Canadian Army Overseas----composed of men from Vancouver to Halifax; from Fort Churchill to Birdseye Centre. And with this influx of Canucks there evolved a new vocabulary. We began to hear about: 'Plough Jockeys;' 'Stubble Jumpers'---'Herring Chokers'--'Jap Colonists' and 'Pea Soupers.' All very amusing. But like the old horse opera epithet: 'Stranger, when you calls me that, say it with a smile!

And what has this to do with Pte. Farmer? Pte. Farmer is proud of his race. He has every right to be. They were a folk brought in bondage to a foreign land. They gained freedom from tyranny. Some of them gained world fame. Who has not heard of Cab Calloway, Duke Ellington and the late 'Fats' Waller? And in the more serious side of music who can deny the greatness of Roland Hayes and Paul Robeson? Among the great composers the name of Coleridge-Taylor stands exalted.

In the fields of medicine, surgery, inventors and educationalists many of the coloured race have won renown. And perhaps Jesse Owens could match strides with any sprinter the world has yet to see. In the ring the names of coloured boxers would make a volume. Jack Johnson, Tiger Flowers and Joe Louis----no mean trio. And all these great people won freedom from tyranny. But the world was threatened again, and in 1939 this fine race rallied to give their life blood for this new country which they entered in chains. They were prepared to sacrifice everything for a freedom more newly found than ours.

Pte. Farmer asked if I would be his defending officer. He didn't have to ask. I am proud to have the opportunity of defending a Canadian. But what can I do? How puny and unavailing any efforts of mine. His persecution began years before I was born, but I hope will end long before I die. But I can do this----I can ask you to listen and not to be prejudiced. I can say: please hear me out. There can be no class of individual in the world more cruel than boys at school. And what are 75% of our soldiers? Just big schoolboys away from the home life that did have a tendency to restrain their horse play and rudeness. I don't ask you to believe that soldiers weep because someone has hurt their feelings. This is a very different matter. Pride! Pride! Pride! Pride of what? Pride of anything you hold dear. And we bring to a land of white people----of the most arrogant people, next to ourselves, these coloured soldiers. We transplant them from their St. Antoinne Street settlement in Montreal, from their colony around Spadina Avenue in Toronto, from all the coloured sections in every large city and town in Canada. There they have lived, loved, married and brought into the world children as dear to them as our own little ones. And they had dreams of these children enjoying a better world than they have known. That is why they are standing ready to hurl themselves at the enemy. Are they not then entitled as soldiers to the same respect and privileges we enjoy? The colour line? In sport and war there exists no colour line. And now I ask you in all sincerity to be tolerant in your understanding. In Liverpool and a few small centres there are young ladies of the coloured race.

They have homes, families, brothers, sisters, friends who extend hospitality. But how few enjoy this opportunity. They walk the streets, alone. They observe ~~this~~ with fine delicacy a code which prevents them from 'kidding the girls' or from the intimacy of friendship we enjoy. I wonder if we would conduct ourselves as well if conditions were reversed?

Loniliness, homesickness----two diseases as dread ---yes more dread because we have the sulfa drugs and Pencillin now to cure our physical tragedies. But Gentlemen, you cannot wrap a rag around a broken heart. Where can they go-----the pubs? Are there certain pubs set aside where coloured boys may go and act with the real spirit of cheerfulness that is the soul of the coloured man. Pubs where they can sing there songs so rich in American folk lore, their spirituals so full of true religion. I have not seen any. But the English people are very courteous and thoughtful to appreciate the value of a kind word occasionally. Can we honestly say the same?

And what has all this to do with Pte. Farmer?

Just this. Ever since he joined the army he has been the victim of jibes, insults and petty practical jokes. Oh I don't say that every soldier has treated him shabbily. But the human being can stand just so much. In this Unit Archibald Farmer has been more unhappy than at any time in his long service in the Canadian Army. I know his story. I am not romancing and trying to paint a tear-jerking scene. I know. Certain others know. If only half of the truth were told to you about the cruelty some of these men have suffered, I am certain something would be done. If a few in this, and a few other units, would volunteer to come forward, without fear of reprisal, and tell you Members of this Court, what they had seen and heard, you would be shocked. I ask you to believe. Have we a right to call ourselves soldiers, to call ourselves men if men of Farmer's race must supress their rage when called:"Black bastards--- black sons-of-whores and all the other vile names known to Christian men." They hold their rage just so long--then they burst the bonds of control---then they strike--and then----- then they are Court Martialled.

Pte. Farmer punched a Sergeant on the nose. Perhaps he didn't punch the right Sergeant. That is too bad. Because then there

would be, to me, a certain satisfaction in bearing the penalty that must follow. But Pte. Farmer is sorry. He is really, genuinely sorry that he let his feelings get the better of his judgement. When he has paid his debt he wants an opportunity to go to some unit where his Canadian brothers won't call him a 'Black bastard' and a 'Black son-of-a-whore.'

My most fervent hope is that he may find that Unit. Where will it be?

E-3
My

ACKNOWLEDGEMENT BY THE ACCUSED AND REQUEST FOR REPRESENTATION

1. I hereby acknowledge that I have been served with a true copy of the Summary of Evidence taken at In the Field. preliminary to my Court-Martial. I further acknowledge that I have been served with a true copy of the charge under which I am being brought to Court-Martial.

Dated at In the Field.
this 30th day of March 1944.

A.C. Farmer
F-86481 Pte. Farmer, A.C.

~~2. I hereby acknowledge that I have been served with a true copy of an additional Summary of Evidence taken at preliminary to my Court-Martial.~~

3. I hereby request that the Convening Officer appoint an Officer to represent me at my trial.

I desire the services of Lieut. S. Brodie, of 6 Cdn. Gen. Pioneer Coy. if he is available.

Dated at In the Field.
this 30th day of March 1944.

A.C. Farmer
F-86481 Pte. Farmer, A.C.

LIST OF WITNESSES

List of witnesses in the case of F-86481 Private Archibald Chestwind FARMER, on the strength of 1 Canadian General Pioneer Company, a soldier of the Canadian Army Overseas.

FOR THE PROSECUTION

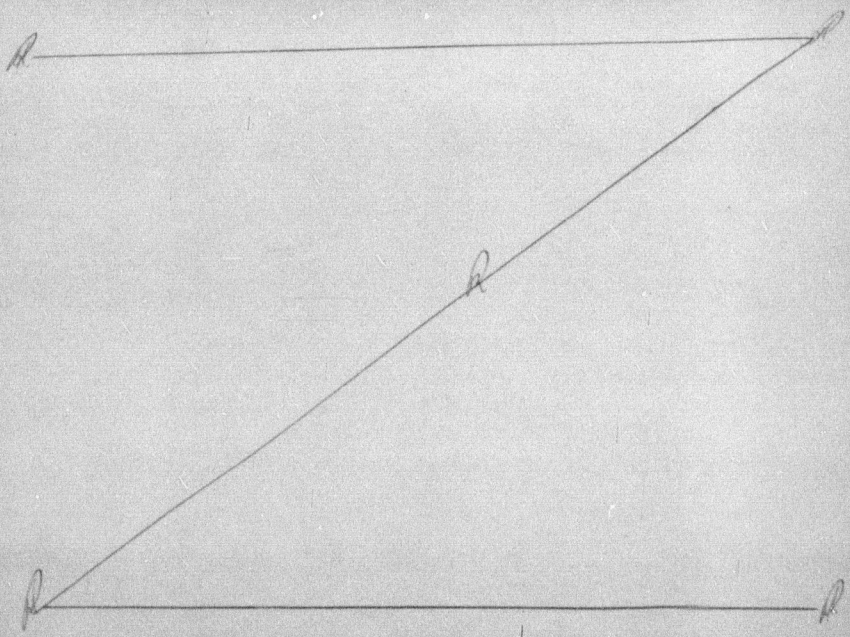
1. K-42143 Sgt. Baxter, W. on the strength of 5 Canadian General Pioneer Company, a soldier of the Canadian Army Overseas.

2. M-17326 Private (Acting Sergeant) Burgess, H. on the strength of 5 Canadian General Pioneer,Company, a soldier of the Canadian Army Overseas.

3. A-9304 Sapper McCaffrey, H. on the strength of 5 Canadian General Pioneer Company, a soldier of the Canadian Army Overseas.

FOR THE DEFENCE

1. B-9690 Gunner Mulligan, M.E. on the strength of 1 Canadian General Pioneer Company, a soldier of the Canadian Army Overseas.



SUMMARY OF EVIDENCE

In the case of F-86481 Private Archibald Chestwind FARMER, on the strength of 1 Canadian General Pioneer Company, a soldier of the Canadian Army Overseas.

By direction of the Commanding Officer this Summary of Evidence is taken on Oath.

FIRST WITNESS FOR THE PROSECUTION

K-42143 Sgt Baxter, W. on the strength of 5 Canadian General Pioneer Company, attached to 1 C.E.A.U. a soldier of the Canadian Army Overseas, having been duly sworn states:-

At about 2310 hrs 16th March 1944, I heard a disturbance and in the capacity of Orderly Sergeant, I investigated and found the disturbance was in the recreation room of the N.A.A.F.I. in the Unit lines. Lance Corporal Sherbonneau J. came out of the room, and I heard someone call "Close that door and keep it closed." I opened the door and saw Private Gariepy backing up towards the door with a chair, legs facing away from him for protection from Private Farmer, who appeared to be attacking him. I saw no blows being struck. Private Gariepy escaped, then Private Guy and Private Farmer turned their attention to Sergeant Burgess who was cornered, he backed up into the rear right hand corner of the room. I told Private Guy to go back to his Quarters. I then saw Private Farmer attack Sgt. Burgess giving him sereral blows in the face and body but mainly on the arms, then Private Guy attacked Sgt Burgess, both Pte Guy and Pte Farmer were attacking by using their fists at the same time. Sgt Burgess was powerless at this time, and could only defend himself with his arms, shielding his face. I saw Private Guy lift his right knee, but he did not strike Sgt Burgess with it. Several of the men tried to stop Pte Guy and Pte Farmer, and Sgt Burgess escapted to the Company Orderly Room where he stayed. I returned to the Company Orderly Room, and telephoned the Orderly Officer of 1 C.E.A.UL requesting that he send an escort as I had two men to place under close arrest. I then went out and locked the N.A.A.F.I. recreation room. Private Farmer and Private Guy then came to the Company Orderly Room, where they jointly stated they had nothing on me, but that they would get the other Sergeants as their own men had no use for them. They also said that they had others behind them to do the job, and that they would go to the Sergeants Quarters and get Sgt. Johnston too. The M.Ps. from 1 C.E.A.U. arrived, and I placed Private Farmer and Private Guy under close arrest and turned them over to the M.Ps. Sergeant McBride returned to camp from Aldershot, and came to the Company Orderly Room. Sgt. Burgess returned to his quarters with Sgt. McBride at approximately 0030 hrs 17th March 1944.

W. Baxter
.....
K-42143 Sgt. Baxter, W.

"The accused declines to cross-examine this witness".

SUMMARY OF EVIDENCE

In the case of F-86481 Private Archibald Chestwind FARMER, on the strength of 1 Canadian General Pioneer Company, a soldier of the Canadian Army Overseas, (Cont'd)

SECOND WITNESS FOR THE PROSECUTION

M-17326 Private (A/Sergeant) Burgess, H. on the strength of 5 Cdn. General Pioneer Company, attached to 1 C.E.A.U. a soldier of the Canadian Army Overseas, having been duly sworn states:-

At about 2300 hrs on the 16th March 1944, whilst sitting in the Recreation Room of the N.A.A.F.I. at Lindford Camp. Private Farmer and Private Guy and one man unknown to me came into the room. Private Guy counted the ones in the room and said he was going to clean up No. 5 Company. He then grabbed and struck Private Gariepy with his fist. I tried to get to the door to go out and call the Orderly Sergeant, but was blocked by Private Farmer, and was struck three or four times in the face by Private Farmer. Then Private Guy attacked me by striking me in the face with his fists. A few moments later Sgt Baxter got them away from me. I left the room and went to the Orderly Room where I took shelter until Private Farmer and Private Guy were taken to the Guard Room.

Cross-examined by the accused

Q.1 How many times did I hit you in the face?
A.1 Three times.
Q.2 Were any blows warded off by your arms?
A.2 Yes.

H Burgess
.....
M-17326 Private (A/Sgt) Burgess, H.

THIRD WITNESS FOR THE PROSECUTION

A-9304 Sapper McCaffrey, H. on the strength of 5 Canadian General Pioneer Company, attached to 1 C.E.A.U. a soldier of the Canadian Army Overseas, having been duly sworn states:-

At approximately 2240 hrs 16th March 1944, I went into the Y.M.C.A. Room of the N.A.A.F.I. at Lindford Camp. At approximately 2300 hrs whilst sitting at a table with Sgt. Burgess, Private Guy walked into the room and turned on the radio, a few minutes later he turned off the radio and left the room. At approximately 2315 hrs Private Farmer and Private Guy walked into the room, Pte Guy immediately went over and turned on the radio, and then began walking over to our table counting the men of No. 5 Company at the same time. On reaching our table he said that he was going to clean up No. 5 Company, as that is the way it should be. He turned to Pte Gariepy who was sitting next to Sgt. Burgess and said "I will start on you first." He then pulled Gariepy off the chair. Pte Gariepy tried to break away from him, and on doing so ran to the door, where he was caught again by Pte Guy. Private Gariepy then pulled a table out from the wall in order to get by and Pte Guy also pulled the table in order that he could get by. Pte Guy caught Pte Gariepy there and struck him with his fist in the face. Gariepy then turned round, and ran towards the billiard table where he picked up a chair. Pte Farmer then stepped in and took the chair from Pte Gariepy, who ran to the other end of the table picking up one of the cues. Pte Farmer then took it away from him.

SUMMARY OF EVIDENCE

In the case of F-86481 Private Archibald Chestwind FARMER, on the strength of 1 Canadian General Pioneer Company, a soldier of the Canadian Army Overseas, (Cont'd)

Sergeant Burgess tried to leave the room, and Pte Guy struck him in the face with his fist knocking him down over a table. Sgt Burgess tried to get up, and Pte Guy aimed another blow at him which missed. I then went to the door to go to my billets and Pte Guy told me not to let anyone out, he then walked away and left the room as Sergeant Baxter was entering.

Cross-examined by the accused

Q.1 Who was the first man to hit Sergeant Burgess?
A.1 Private Guy.

H. McCaffrey
A-9304 Sapper McCaffrey, H.

The accused was cautioned as follows: Do you wish to make any statement or to give evidence on oath? You are not obliged to say anything or give evidence, unless you wish to do so, but whatever you say or any evidence you give will be taken down in writing and may be given in evidence.

The accused F-86481 Private Archibald Chestwind FARMER on the strength of 1 Canadian General Pioneer Company, a soldier of the Canadian Army Overseas, having been duly sworn states:-

At 2230 hrs on the 16th March 1944, I left the "Crown" Public House, Headley Downs with three other friends and walked along the road, stopping every few hundred yards to sing songs. On reaching my firends camp we stopped and we finished drinking the remainder of the nine bottles of beer w ich I had been carrying. One friend and I went to the kitchen and ate a sandwich. We then came out and began walking home, and after talking for a few minutes in the road, I left my friend who returned to his camp, and I set out for mine which was about one and a half miles away. On reaching my Camp, I can't remember the hour, I went to the Cook-House and had something to eat, and met Pte Guy and Pte Mulligan who were there also. We all went to the hut, and after a few minutes we went to the Y.M.C.A. Recreation Room of the N.A.A.F.I. Pte Guy walked ahead of me, and turned on the radio. I walked up to the radio and listened to the programme. I heard a shuffle behind me, and on turning round, saw Pte Gariepy standing holding a chair over his right shoulder ready to throw it. I went up to him, and took the chair away, and he walked away, and took a cue from the billiard table. I walked over to the door, and whilst standing there, Sgt. Burgess tried to pass me, and I asked him if he was the man who was abusing our nationality, and at the same time I hit him in the face with my fist. After that I lost my head and I have no recollection of subsequent events until I found myself in the truck with the M.Ps.

A.C. Farmer
F-86481 Pte Farmer, A.C.

SUMMARY OF EVIDENCE

In the case of F-86481 Private Archibald Cheatwind FARMER, on the strength of 1 Canadian General Pioneer Company, a soldier of the Canadian Army Overseas, (Cont'd)

I certify that the foregoing Summary of Evidence consisting of Three pages was taken down by me in the presence and hearing of the accused, and that Rules of Procedure 4(c), (d), (e), (f) have been complied with.

.....Lieut.
Officer Taking Summary.

In the Field,
29th day of March,
1944.

EXA

No. F 86491 Name Farmer, A.C. Sqn., Battery, or Company — Corps — Revised in accordance with Ro. 2084. — M.F.M. 6 (A.F. B.122) 40/P & /S136 (2968)

Date of enlistment 1 Jul. 41 — G.C. Badges — Service or Proficiency Pay

Date of last entry in Company Conduct Sheet 1 Nov. 41. — No. and date of last drunk — Period not reckoning towards freedom from extra fine — Sheet No. 1. — Signature O.C. Company, etc. P. Lind Cap — Character

Place	Date of offence	Rank	Cases of drunkenness	OFFENCE	Names of Witnesses	Punishment awarded	Date of award or of order dispensing with trial	By whom awarded	Remarks
Field	20 Jun. 43	Pte		AWL from 2300 hrs. 20 Jun. to 1100 hrs. 21 Jun. (12 hrs.) AA. 15-11	Documentary	Admonished	21 Jun. 43	Maj. DST Richmond	1 days pay 1/4 1/6 (1/6) R
Field	16 Nov. 43	Pte		(1) AWL from 1300 hrs to 1600 hrs. 16 Nov. 43. (3 hrs.) AA 15-11	Sgt Johnston to Col Dingley, S.C.	10 days F.P.	16 Nov. 43	Maj. DST Richmond	10 days pay 14 5 (1/6) R
				(2) Act to prej. etc. during duty hours, did enter a public house, known as "Duke of York" at 1310 hrs. 16 Nov. 43 - AA. 40.	Capt Carter, J.M.				
				(3) Conduct to prej. etc. was fighting with a fellow soldier, Pte Pate, at approx. 15 hrs. 16 Nov. 43 - AA. 40.	Pte Clapperton, S.				

(P.T.O.)

Place	Date of offence	Rank	Cases of drunkenness	OFFENCE	Names of Witnesses	Punishment awarded	Date of award or of order dispensing with trial	By whom awarded	Remarks
Field	17 Nov. 43	Pte		Using threatening language to his sup. officer at approx 0745 hrs 17 Nov. 43 did threaten Sgt Johnston by saying, "If you don't get out of my way, I'll hit you too"	Pte Travers, W.R.	30 days F.P. to run concurrent with pun. current	17 Nov. 43	Maj. D.S.T. Richmond	30 days pay 14.8.00
Field	23 Dec. 43	Pte		AWL from 1730 hrs 23 Dec to 0400 hrs 24 Dec (10 hrs 30 mins) AA. 15 (1)	Cpl Lord, G.H.	7 days C.B.	30 Dec. 43	Lt. R.B. Swale	1 days pay 1.4.9

Certified True Copy.
P. Koncl Capt.
1 CDN. GEN. PNR. COY.

M.F.B. 355
22M—5-41 (372-3)
H.Q. 1772-99-020
A.F.B. 296

STATEMENT AS TO CHARACTER AND PARTICULARS OF SERVICE OF ACCUSED

Number	Rank	Name	Regiment (or unit)
F.86481	Private	FARMER, Archibald Chestwind	1 C.G.P.C.

1. The following is a fair and true summary of the entries in the Company Conduct sheets Service and General Regimental and Squadron, Battery or Company Conduct sheets of the accused, exclusive of convictions by a Court-Martial or a Civil Court, of summary awards under Section 47 of the Air Force Act Army Act and of cases in which trial has been dispensed with.

	Within last 12 months	Since enlistment or appointment
For A.A. 8(2)	1 times	times
For A.A. 15(1)	3 times	times
For A.A. 40	2 times	times
For	times	times

~~Number of instances of gallantry or distinguished conduct~~

or,

~~There are no entries in the conduct sheets of the accused.~~

NOTE.—If the charge is for drunkenness, the entries for drunkenness must be stated separately.

2. The accused has not been previously convicted

or,

~~Previous convictions of the accused by a court-martial or a civil court, of summary awards under Section 47 of the Air Force Act Army Act and dispensations with trial under A.F.A. 73 A.A. 73 are set out in the Schedule annexed to this statement.~~

3. The accused is not under sentence at the present time.

or,

~~The accused at the present time is under sentence for beginning on the day of~~

4. The accused has been in confinement awaiting trial on the present charges, for 0 days in civil custody, and ~~21~~ days in ~~military~~ Air Force custody, making a total of ~~21~~ days in custody, of which Nil days were spent in hospital.

5. The present age of the accused according to his ~~record of service~~ attestation paper is 21 yrs 240 days

6. The date of his ~~commission~~ attestation specified in his ~~record of service~~ attestation paper is 1 Jul 41

7. The service which the accused is allowed to reckon towards discharge is 2 yrs 265 days

8. The accused is entitled to reckon 2 yrs 265 days service for the purpose of determining his pension, etc.

9. The accused is in possession of or entitled to ~~no air force decoration, or air force reward~~ military (or is in possession of or entitled to). State any ~~air force~~ military decoration or reward. C.V.S.M. & Clasp D.O. #5 d/15 Jan 44.

~~10. (If the accused is a warrant officer.) The accused before he was made a warrant officer last held, (Air Force) the regimental rank of~~

Ex B

~~11. (In the case of an officer.) The accused holds in the Royal Canadian Air Force the rank of~~ Permanent Force

..... unit dated ....., and in his regiment (or corps), the rank of

~~dated~~ .....

~~12. The accused has served as a non-commissioned officer continuously, without reduction, to the~~ present date:—

..... Date of promotion.

In the rank of ..... years.

In the rank of ..... years.

~~In the rank of~~ ..... years.

NOTE.—If any matter in any of the above paragraphs cannot be stated from the Regimental books, the paragraph must be struck through.

SCHEDULE

~~Of convictions by a court-martial or civil court, of summary awards under Section 17 of the Army~~ Air Force Act, and of cases in which trial has been dispensed with of accused, Number ..... Rank ..... Unit

Name ..... of ..... Regiment

NOTE.—A verbatim extract from the regimental books stating these convictions and dispensations with trial must be inserted.

Description of Court by which tried	Date and Place of Trial	Charge upon which convicted	Sentence of the Court	Punishment Remitted

I hereby certify that the foregoing schedule of convictions and dispensations with trial is a true extract ~~from the regimental books in my custody.~~

Signed this ~~21st day~~ 5th day of April ~~1943~~ 44. P. Kench Capt

1 CDN. GEN. PNR. COY.

The above statement (with the schedule of convictions and of cases in which trial has been dispensed with) is read, marked ..... signed by the president, and annexed to the proceedings.

H.Q.C. 55-F-877

CONFIDENTIAL

DEPARTMENT OF NATIONAL DEFENCE - OTTAWA, CANADA

SUBJECT

FIELD GENERAL COURT-MARTIAL

ERIESEN, L.S. L-19583 SPR.

CENTRAL REGISTRY	DATE	R.A. OR S.F.	INITIALS	REFERRED TO	FOR	INITIALS	DATE
				(If purpose for which referred cannot be expressed on one line, enter here "With Minute")			2-12-46

CONFIDENTIAL
H.Q.C. 55-F-877

OVERSEAS COMBINED

NOTICE

1. This should be retained no longer than absolutely necessary. If a file is frequently needed at short intervals, it is better to B.F. it for two or three days than keep it out of Central Registry indefinitely. This reserve is being completed and kept to cover, and also other offices are requested to use same.

2. Before forwarding [illegible] enclosure a file is passed direct to another branch.

PASS THIS FILE IN ENVELOPE

RECORDED AT CMHQ IN A3 160..LL-118

C 101

Regt	No	Rank and Name	Description of Court Martial	Date and Place of Trial
4 Cdn Fd Coy RCE	L19583	Spr Friesen L.S.	FGCM	Fd 24 Nov 43

CHARGE

(1) AA 15(1) WOAS, AWL from 1300 hrs 12 Oct 43 until 0900 hrs 26 Oct 43 (13 days 19 hrs)

President and Members of Court	Plea	Finding
Maj L.C.G. Tilley 1 Fd Coy RCE Capt J. Winn 3 Fd Coy RCE Lt J. Near 2 Fd Pk Coy RCE	1. Guilty	1. Guilty

FORMER CONVICTIONS

Date and Place of Trial	Offence	Punishment Awarded

SENTENCE AND MINUTE OF CONFIRMATION

6 Months imprisonment

Confirmed by Lt-Col G. Walsh, CRE 1 Cdn Div on 30 Nov 43

Transmitted for Promulgation	When and where Promulgated	Court dissolved
	Fd 14 Dec 43	19

Forwarded to CMHQ 5 Feb 44

Certified correct

Date.....5 Feb 44.....

Signature.....W. B. Bate.....
Capt ADJA 1 CERGp

Rank and Appt.....

CERTIFIED TRUE COPY

W. B. Bate

(W.B. Bate) Capt
ADJA 1 CERGp

26 C (101) RECORDED AT CMHQ IN AB 160 LLL-118 (1/54)
Army Book, 160.
5238 [illegible] EM—300 Bks.—5-43 Whether elected Trial Case No.

Regt.	No.	Rank and Name	Description of Court-Martial	Date and Place of Trial
4 Cdn Fd Coy RCE	L-19583	Spr. Friesen, L.S.	F.G.C.M.	Italy 24 Nov 1943

CHARGES

(1) AA 15(1) AWL from 1300 hrs 12 Oct 43 to 0900 hrs 26 Oct 43 (13 Days 19 hrs)

See also certified copy AB 160 kept by 1 CBRGp.-

President and Members of Court	Pleaded	Finding
Major L.G.C. Lilley Capt J. Winn Lieut J. Near	(1) Guilty	(1) Guilty

FORMER CONVICTIONS

Date and Place of Trial	Offence	Punishment Awarded

Character	Decorations, Honours and Rewards	Age	Service

SENTENCE AND MINUTE OF CONFIRMATION

6 mon imp.
Confirmed by CRE 1 Cdn Div 30 Nov 43

Transmitted for Promulgation | When and where Promulgated 14 Dec 43 4 Cdn Fd Coy | Court dissolved 19

Date of Receipt	To whom sent	Date sent	Purport
31 Jan 44	Certified true Copy. R Cordeau (R. Cordeau) Capt		

J M J

C (100) RECEIVED 2 JAN 1944 JAG BRANCH C.M.H.Q. RECORDED AT CMHQ IN AB 160 LLL-117 (1/50 25

Army Book, 160. Whether elected Trial Case No.

Regt.	No.	Rank and Name	Description of Court-Martial	Date and Place of Trial
1 Cdn LAA Regt RCA	K-42216	Gnr. Falconer, F.	F.G.C.M.	Italy 29 Jan 19 44

CHARGES

(1) AA 9(2)

See also certified copy AB 160 kept by 1 CBRGp.-

C100

President and Members of Court	Pleaded	Finding
Major A.M. Douglas Lieut G.F. Boyer Lieut W.A. Taylor	(1) Not Guilty	(1) Not Guilty

FORMER CONVICTIONS

Date and Place of Trial	Offence	Punishment Awarded

Character	Decorations, Honours and Rewards	Age	Service

SENTENCE AND MINUTE OF CONFIRMATION

N/A

Transmitted for Promulgation	When and where Promulgated N/A	Court dissolved 19

Date of Receipt	To whom sent	Date sent	Purport

Certified true Copy

R Cordeau

31 Jan 44 (R. Cordeau) Capt

J.M.J

H.Q.C. 55-F-878 CONFIDENTIAL

DEPARTMENT OF NATIONAL DEFENCE—OTTAWA, CANADA

SUBJECT

FIELD GENERAL COURT-MARTIAL

FALCONER, F. K-42216 GNR.

CONFIDENTIAL
H.Q.C. 55-F-878

CENTRAL REGISTRY	DATE	P.A. OR D.F.	INITIALS	REFERRED TO	FOR	INITIALS	DATE
				(If necessary write referred names in succession on one line, as: exam. here "With Minute")			
							2-12-46

OVERSEAS COMBINED

NOTICE

1. Files should be retained no longer than absolutely necessary. If a file is frequently needed at short intervals, it is better to R.F. If for two or three days then keep it out of Central Registry indefinitely. This ensures it being completed and kept in order, and also gives other authors an opportunity to use same.

2. Correct Registry symbol to be quoted in reference & file is passed direct to another branch.

3. All persons having occasion to use official file to observe.

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RECORDED AT CMHQ IN AB 160 LLL-117

C 100

ACQUITTED

Regt	No	Rank and Name	Description of Court Martial	Date and Place of Trial
1 Cdn LAA Regt RCA	K42216	Gnr Falconer, F	FGCM	Italy 29 Jan 44

CHARGES

(1) AA 9(2) WOAS, Disobeying a lawful command 20 Jan 44 at Bari 1945 hrs did not move away for the NAAFI Canteen when ordered to do so by L/Col Bond, G.A. L of C Pro Coy CM Police

President and Members of Court	Plea	Finding
Maj A.M. Douglass 5 Cdn Med Regt RCA Lt G.F. Boyer 1 Cdn LAA Regt RCA Lt W.F. Taylor 11 Cdn A Fd Regt RCA	1. Not Guilty	1. Not Guilty

FORMER CONVICTIONS

Date and Place of Trial	Offence	Punishment Awarded

SENTENCE AND MITIGATION OF CONFIRMATION

Transmitted for Promulgation	When and where Promulgated	Court dissolved
		19

Forwarded to CMHQ 5 Feb 44

Certified correct

Date...9.Feb.44.....

Signature...W.B. Bate.....
Capt ADJA 1 CHRGp

Rank and Appt.....

CERTIFIED TRUE COPY

W.B. Bate

(W.B. Bate) Capt
ADJA 1 CHRGp

H.Q.C. 55-F-879 CONFIDENTIAL

DEPARTMENT OF NATIONAL DEFENCE—OTTAWA, CANADA

SUBJECT

FIELD GENERAL COURT-MARTIAL

FALCAU, P.E. D-62164 PTE.

CENTRAL REGISTRY	DATE	W.A. OR R.F.	INITIALS	REFERRED TO	FOR	INITIALS	DATE
				(If purpose for which referred cannot be accommodated on this line, enter here "Both Minute")			2-12-46

CONFIDENTIAL
H.Q.C. 55-F-879

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NOTICE

1. Files should be retained no longer than absolutely necessary. If a file is frequently needed at short intervals, it is better to R.F. it for two or three days than keep it out of Central Registry indefinitely. This ensures it being completed and kept in order, and also gives other subjects opportunity to accumulate.
2. Registered Papers should be returned immediate file is passed direct to another branch.
3. All papers having relation should bear the same file number.

PASS THIS FILE IN ENVELOPE

51-0

Correspondence to be PINNED here.

Army Form A.3.

Form for Assembly and Proceedings of Field General Court Martial on Active Service.

PROCEEDINGS.

A.
Order convening the Court.

On Active Service, this THIRD day of SEPTEMBER, 19 42

Whereas it appears to me, the undersigned, an officer in Command of 6th Canadian Infantry Brigade, on active service, that the persons named in the annexed Schedule, being subject to Military Law, have committed the offences in the said Schedule mentioned.

And whereas I am of opinion that it is not practicable that such offences should be tried by an ordinary General Court Martial; *~~[and that it is not practicable to delay the trial for reference to a superior qualified officer.]~~

* Omit where Convening Officer is a Commanding Officer or is of Field Rank.

I hereby convene a Field General Court Martial to try the said persons, and to consist of the Officers hereunder named.

~~*[XXXX

SCHEDULE.

Number, Rank (*a*), Name and Unit of Accused (*b*)	Offence charged	*Plea	Finding, and if Convicted, Sentence (*c*)	How dealt with by Confirming Officer (*d*)
D-62164 Private Falcau, P.E. Fus M R	First charge W.O.A.S. absenting himself without leave in that he, in the field, at 2300 hrs on the 2 Aug 42 absented himself without leave until 1615 hrs on the 24 Aug 42. (21 days, 17 hrs 15 minutes) A.A. Sec 15(1)	guilty	guilty	
	Second Charge W.O.A.S. losing by neglect his equipment clothing and regt'l necessaries in that he in the field was deficient of equipment, clothing and regt'l necessaries in the amount of £2-10-8½	Not guilty	guilty Sentenced to undergo detention for a period of 42 days and plead under stoppages of pay for £2-10-8½ deferred to Ret	I Confirm GHW

* Question to be asked of accused, if he pleads not guilty (R. of P. 39 (A)):—
"Do you wish to apply for an adjournment on the ground that any of the rules relating to procedure before trial have not been complied with, and that you have been prejudiced thereby, or on the ground that you have not had sufficient opportunity for preparing your defence?"
Answer (*to be recorded on separate sheet if necessary*):— No Sir

(Signed) G H Whitehead Brig (Signed) G H Macdonald Major
Commanding 6th Canadian Infantry Brigade — President.
Convening Officer (*e*)

(*a*) Appointment acting rank or acting appointment, if any, to be stated in brackets after the substantive rank.
(*b*) Unless unavoidable, not more than three names are to be entered on one form, and in serious cases one only.
(*c*) Recommendation to mercy, if any, to be inserted in this column.
(*d*) It is not necessary that the Confirming Officer should sign his name in this column. Initials are sufficient.
(*e*) Must be signed by the same Officer who signs on the first page, and all alterations in the first two columns of the Schedule to be initialled by him.

Evidence and Charge Sheets (if necessary) to be PINNED here.

B. Certificate of President as to proceedings.

I certify that the above Court assembled on the 4 day of Sept 1942, and duly tried the persons named in the Schedule, and that the plea, finding, and sentence in the case of each such person were as stated in the third and fourth columns of that Schedule.

I also certify that :—
1. The members of the Court
2. The witnesses
*(3. The interpreter) were duly sworn
*(4. The officers under instruction) a short hand writer

* Omit if not applicable.

Signed this 4 day of Sept 1942.

G H Macdonald Major
President of the Court Martial.

C. Certificate in case of death sentences.

I certify that the terms of *A.C.I. 570 of 1918 have been complied with.

* See footnote (b) on page 762 M.M.L. 1929.

Signed this day of 19 .

President of the Court Martial.

D. Confirmation.

I have dealt with the findings and sentences in the manner stated in the last column of the Schedule, and, subject to what I have there stated, I hereby confirm the above findings and sentences.

*~~(I direct that the soldier named in the margin be not committed to prison until further orders.)~~ GHW

* To be omitted unless penal servitude or imprisonment having been awarded, the Confirming Officer either has no authority to commit to prison, or, having such authority, recommends suspension.

Signed this 6 day of Sept 1942

G H Whitehead Brig
Confirming Officer.

Promulgated and extracts taken in the case of

(*a*) (Dated) 7 Sept 42 (Signed) [illegible] Lt. A/Adjt.

Promulgated and extracts taken in the case of

(Dated) 7 Sept 42 (Signed) D J Leach Capt. for S.C. 6 C.I.B.

Promulgated and extracts taken in the case of

(Dated) (Signed)

(*a*) When several cases are promulgated in one unit on the same day the Officer need only sign once.

(41775) Wt. 40215—893 300 m. 1/42 P. St. G. Ltd.

MEDICAL INSPECTION

FUSILIERS MONT ROYAL, C.A.(O)

I hereby certify that I have examined Regt'l No. D62164 Rank Pte
Name Falcau, P.E. this morning and That I found him MENTALLY
and PHYSICALLY FIT to undergo trial by F.C.C.M.

Place Field

Date 4 Sept 42

Lieut or Capt Victor Capt RCAM
Medical Officer

HT.

Lt Col Major

**All printed matter not applicable to the particular Court being held should be struck out and initialled by the President.

A

**Form of Proceedings for General and District Courts-Martial

Proceedings of a Field General Court-Martial held at Fus M R on the 4 day of September 19 42 by order of Brig. A Whitehead DSO Commanding 6 Cdn Inf Bde dated the 3 day of Sept 19 42

President.

Major G H Thorburn 1 Lond R

Members.

Capt C Gauchier Fus M R

Lieut A L McGill Can P C

, Judge Advocate.

Trial of* D 62164 Pte Falcon R Fus M R

The order convening the Court, the charge-sheet and the summary (or abstract) of evidence are laid before the Court.

The Court satisfy themselves that _____ is not available to serve owing to

_____, waiting member takes his place as a member of the Court.

The Court satisfy themselves as provided by Rules of Procedure 22 and 23.

The accused is brought before the Court.

Prosecutor,† Lieut B J Guilmont

Counsel‡ or defending officer† Lieut J R Tremblay

At 525 o'clock the Trial commences.

The order convening the Court is read, and is marked signed by the President, and attached to the proceedings.

The names of the President and members of the Court are read over in the hearing of the accused, and they severally answer to their names.

Question by the President to the accused. Do you object to be tried by me as President, or by any of the officers whose names you have heard read over?

Answer by accused. No Sir

(N.B.—If objection is made it should be recorded, together with the decision of the Court, on a separate sheet.)

* Here insert No., Rank, full Name, Regiment, and Appointment (if any).
† Here state Rank and Name, and Regiment (if any).
‡ Qualification to be stated.

Mil. Form B. 271
16M—9-39 (2132)
H.Q. 1772—39-224

B

The President, members and judge-advocate are duly sworn.

The following officers under instruction are duly sworn.

The shot hand writer is duly sworn.
D-109378 Pte De Meyer M.

Charge-Sheet

The charge-sheet is signed by the President, marked B 2 and annexed to the proceedings.

Instruction. *If the accused has elected to be tried under Army Act, sec. 46 (8) the fact should be here recorded.*

The accused is arraigned upon each charge in the above-mentioned charge-sheet.

Are you guilty or not guilty of the [first] charge against you, which you have heard read? *Question to the accused.*

guilty *Answer.*

Are you guilty or not guilty of the second charge against you, which you have heard read? *Question.*

Not guilty *Answer.*

Are you guilty or not guilty of the third charge against you, which you have heard read? *Question.*

Answer.

Are you guilty or not guilty of the fourth charge against you, which you have heard read? *Question.*

Answer.

The accused having pleaded Guilty to first charge, the provisions of Rule of Procedure 35 (B) are here complied with.

If the trial proceeds upon any charge to which there is a plea of "Not Guilty," the Court will not proceed upon the record of a plea of "Guilty," until after the finding on that other charge. *Instruction.*

CHARGE SHEET

The accused, D 62164 Private FALCAU, P.E., les Fusiliers Mont-Royal, a soldier of the Canadian Army Overseas, is charged with:-

FIRST CHARGE
A.A.Sec.15(1) WHEN ON ACTIVE SERVICE, ABSENTING HIMSELF WITHOUT LEAVE
in that he,

In the Field, at 2300 hours on the 2nd of August 1942, absented himself without leave until 1615 hours on the 24th of August 1942.

2nd Charge.
AA.Sec 24(3) WHEN ON ACTIVE SERVICE, LOSING BY NEGLECT HIS EQUIPMENT, CLOTHING AND REGIMENTAL NECESSARIES
in that he,

In the Field, on the 25th of August 1942, was deficient of the undermentioned articles in the amount of two pounds, ten shillings, eight pence and one farthing as shown hereunder:

		Vocabulary Price.			75%		Vocab.Price
		£	ls	lld	£	ls	5.25 d
2	Att. braces	-	3	6	-	2	7.50
1	Belt Waist small.	-	12	6	-	9	4.50
2	Pouches Basic	-	3	10	-	2	10.50
1	Strap Shoulders	-	10	-	-	7	6
1	Ground Sheet	-	18	8.50	-	14	-.375
1	Respirator Complete	-	2	3	-	1	8.25
6	Eyeshields	-	-	9.50	-	-	7.125
1	Ointment #2 Tube	-	6	4.50	-	-	3.375
1	Anti-dim	-	12	3	-	9	2.25
1	Gas cape	-	1	5.50	-	1	1.125
1	Gas wallet	£	3	7	£	2	8.25

(M.FORGET) Major,
T/COMMANDING,
Les Fusiliers Mont-Royal,
Canadian Army Overseas.

In the Field,

This 30th day of August,1942.

C

Proceedings on Plea of Not Guilty

*Instruction. (See R. P. 39 (A)) Question.

*Do you wish to apply for an adjournment on the ground that any of the rules relating to procedure before trial have not been complied with, and that you have been prejudiced thereby, or on the ground that you have not had sufficient opportunity for preparing your defence?

Answer. No Sir

The prosecutor makes an opening address [hands in a written address, which is read, marked , signed by the President, and attached to the proceedings.] No opening address given

The prosecutor proceeds to call witnesses.

First witness for prosecution. D-61723 C.S.M. Sellstrom H. J. RCy Fus R.N.

being duly sworn, is examined by the prosecutor.

Q. Did you on 24 Aug 42 inspect the kit of Pte Falcus

A. yes Sir.

Q. (Prosecutor shows witness list of defence depositions as shown on charge sheet) Do you recognise this list

A. yes Sir that is list of deficiencies found on inspection of Falcus' kit 24 Aug 42.

Q. Did Falcus say he had any other kit.

A. Yes Sir he said he had had some kit in some of the many camps he's been in claiming he had a receipt for some kit.

Cross examined by Defence

Q. ~~(Cpl)~~ When you made your inspection of Falcus' kit on his return did he show you a receipt or demand

A. Yes he showed me a demand and no receipt in it.

(2)

(over)

C2

1st direct cont'd.

Questioned By Court

Q. You said Falcon had a respirator Hammock when you made 1st injection

A. yes sir it was still in 1st but Falcon said it was not his hammock

Q. What did you do.

A. I closed him injured respirator complete.

Case for Present in chief

D

The prosecution is closed.

Defence

Question to the accused. Do you apply to give evidence yourself as a witness?

Answer. No sir.

Question. Do you intend to call any other witness in your defence?

Answer. Yes sir

Question. Is he a witness as to character only? *Answer.* No sir. fact.

INSTRUCTIONS TO THE COURT

(i) When the answers to the above questions have been recorded, the Court will follow the provisions of Rules of Procedure 40 and 41 respecting the order of evidence and addresses which is applicable to the circumstances of the case.

(ii) All addresses by prosecutor, counsel or defending officer, whether recorded by the Court or handed in in writing will be attached to the proceedings in the order in which they are made. Any address which the accused is entitled to make pursuant to Rules of Procedure 40 (C) (iv) and 41 (A) (i) and (iii) will be similarly dealt with. Written addresses will be read to the Court, marked and signed by the President. If any person who is entitled to make an address declines to do so, a record will be made to that effect.

(*Where any evidence is given for the defence.*)

The evidence of the accused (and of the witnesses for the defence including witnesses as to character) is recorded on a separate page (*see overleaf*).

(*Where the accused does not give evidence upon oath.*)

Question to the accused. Have you anything to say in your defence?

Answer. The accused in his defence says†

[Hands in a written address which is read, marked

signed by the President and attached to the proceedings.]

Instruction. † In this space will be recorded any oral statement or address made by the accused in his defence when he has not given evidence as a witness. (For any additional address which he is entitled to make, see Instructions to the Court *above*.)

D 2

The evidence of the witnesses for the defence, including that of the accused, if he is a witness, will be taken here in the order in which they give evidence.

Defendy offer calls himself - Witness

1st Witness

Lt J R Tumbly Fus M R
having been duly sworn states.
I went to the detention room to visit Falcon on 31 Dec 42. I charged with the charge on found Falcon then in possession of following articles (produced articles as listed below)

1 Respirator complete
1 Gas mask sheet
6 eye shields
1 Pistol cord #2
1 Rate disc
2 Braces shoulder

I asked Falcon why he had not handed this in to Q.M. and he replied Q.M would not take it as respirator was not complete.

Cross examined by Pte

Q. How did you ascertain that the property you produce belongs to Pte Falcon.
A. There are no identifications marks to prove who it belongs to.
Court
Q. Pte. Have no further questions

2nd Witness (identification only)

D-61723 C.Q.M.S. Pilkington H being reminded he was still under oath states. I am in same Coy as accused since beginning of war. I cannot say much about his character. He is not a bad man.

Defending Officer makes no closing Address.

Prosecutor sums up

Prosecutor points out that C.O.M.S inspected accused's kit on the 24th May 42 and accused was unable to produce kit as listed in charge sheet.
Now at a later date the accused produces some of the articles listed as deficient but there has been no evidence to indicate the kit is his

D.A.P. Prosecutor

E

Finding*

*To be struck out except in cases where trial has taken place on a plea of "Not Guilty."

The Court is closed for the consideration of the finding.

The Court find that the accused D 62164 Pte Falcon RE is guilty of charges as read.

Proceedings on Conviction *before Sentence*

*When the Court is already open this sentence will be struck out.

*The Court being re-opened, the accused is again brought before it.

Evidence of character, &c.

Lieut R J Quinnard is duly sworn.

Question by the President.

Have you any evidence to produce as to the character and particulars of service of the accused? *Answer by the Witness.* Extract Declaration Court of Inq Casualty Return A.F.B. 246 m.m.

The above statement [with the schedule of convictions and of cases in which trial has been dispensed with] is read, marked , signed by the President, and annexed to the proceedings.

Question by the President.

Is the accused the person named in the statement which you have heard read? *Answer by the Witness.* Yes Sir

Question.

Have you compared the contents of the above statement with the regimental books? *Answer.* Yes Sir

Question.

Are they true extracts from the regimental books, and is the statement of entries in the conduct sheets a fair and true summary of those entries? *Answer.* Yes Sir

[Instruction.—If by reason of the nature of the service of the accused in a departmental corps, or otherwise, the finding of the Court renders him liable to any exceptional punishment in addition to that to be awarded by the Court the prosecutor must call the attention of the Court to the fact, and the Court must inquire into the nature and amount of that additional punishment.]

Cross-examined by the accused. Accused does not wish to cross examine witness.

Question to the accused.

Do you wish to address the Court? *Answer.* No. (as "C" statement not required)

The Court is closed for the consideration of the sentence.

F

Sentence

The Court sentence the accused D62164 Pte Falcon P.E. Sentence.
to undergo detention for
a period of 52 days and
be placed under Stoppages
of pay @ £2-10-8½
deferred in R.O.

Lt Col Commdg

CC

Proceedings on Plea of Guilty

*To be struck out in case no plea of "Not Guilty" has been proceeded with.

*[The Court having been re-opened, the accused is again brought before it, and the charge to which he has pleaded "Guilty" read to him again.]

The accused D 62164 Pte Falcon R.C.

is found guilty of both Charges as laid

*The summary (or abstract) of evidence is read, marked , signed by the President, and attached to the proceedings.

Question to the accused. Do you wish to make any statement in mitigation of punishment?

Answer. The accused in mitigation of punishment says:— Defending Officer on behalf of accused State

[or hands in a written statement, which is read, marked , signed by the President, and attached to the proceedings.]

The accused is young, joined age only in 1940. He served in Iceland & was on special training with unit recently. Has always done good job. Often acted as section leader. Reason he went A.W.L. is he has only had 2 furloughs since 1940. The rest of time courses, & sickness interfered. On return from Iceland his Coy Comdr had promised him 10 days leave but he only got 7. Decided to take leave on his own.

Instruction.

*If there is no summary or abstract of evidence, sufficient evidence to enable the Court to determine the sentence, and to enable the confirming officer to know all the circumstances connected with the case, will be taken on a separate sheet in the same manner as on a plea of "Not Guilty."

If from the statement of the accused, or from the summary or abstract of evidence, or otherwise, it appears to the Court that the accused did not understand the effect of his plea of "Guilty," the Court shall alter the record, and enter a plea of "Not Guilty," and proceed with the trial accordingly.

Do you wish to give evidence yourself or to call any witnesses as to character?

Question to the accused.

Answer.

Evidence as to character.

ABSTRACT OF EVIDENCE
in the Field General Court Martial
of D 62164 Private FALCAU, P.E.,
Les Fusiliers Mont-Royal, Canadian
Army Overseas, in pursuance to
R.P. 76

Take notice that at the trial of the above mentioned soldier:

a) Lieutenant B.J.Guimond will be called as a witness to produce the following documents in evidence:

i) Casualty Return # 4 dated 7th Aug. 42 and signed by Captain C.Camaraire, Adjutant, F.M.R., showing the above soldier as an absentee from 2300 hours on the 2nd of Aug. 42.

ii) Record of the declaration of a Court of Inquiry held on the absence of the a/m soldier.

b) D 61723 C.Q.M.S. Pelletier, Les Fusiliers Mont-Royal, will be called as a witness to give evidence on the following point:

i) That Private Falcau, P.E. reported to him at about 1615 hours on the 24th of August 1942.

ii) That upon his return he was deficient of articles of equipment as shown on charge sheet.

The accused was duly warned in accordance with R.P.4(e) but declines to make a statement and reserves his defence.

Compliance with R?P.4 (d) and (e) certified.

[signature]
[illegible] Major,
T/COMMANDING,
Les Fusiliers Mont-Royal,
Canadian Army Overseas.

In the Field,
This 30th day of August, 1942.

To/

This Honourable Court,
D 62164 Private Falcau, P.E.,
Lieutenant B.J.Guimond, Prisecuting Officer.

RECORD of the Declaration of a Court of Inquiry assembled at in the Field on the 25th day of August 1942, for the purpose of investigating and recording the absence, without leave, from his duty, and deficiency, if any, in the Arms, Ammunition, Equipments, Instruments, Regimental Necessaries, or Clothing of No. D 62164 Private FALCAU, P.E.

DECLARATION

The Court declare that No. D 62164 Private Falcau, P.E.

illegally absented himself without leave from New Pond Common Camp at Wisborough Green at 2300h on the second day of August 1942 and that on the 25th Aug. 42 he was deficient, and that he is still deficient of the following articles:—

	ARTICLES	VALUE		ARTICLES	VALUE
2	Att. braces	1	11		
1	Belt Waist, small	3	6		
2	Pouches Basic	12	6		
2	Starp Shoulders	3	10		
1	Ground Sheet	10	-		
1	Respirator Complete	18	8½		
6	Eyeshields	2	3		
1	Ointment #2 Tube		9½		
1	Anti dim		4½		
1	Gas Cape	12	3		
1	Gas wallet	1	5½		
		£ 3/7/7			

G.V.Delorme Captain President
R. de Hull

Signed at New Pond Common

J.R.Woods, Lieut. Member
Fus. Mont-Royal

this 25th day of Aug. 1942

J.R.Tremblay Lieut. Member
Fus. Mont-Royal

Signature of Commanding Officer

Maurice Forget Major
a/Lt/C.O.

CERTIFIED TRUE

Adjutant,
Les Fusiliers Mont-Royal.

(4)

[Margin for Filing Purposes]

ARMY FORM W.3011 (Books of 300)

Date of last A.F. W.3011 [illegible]

19 Number of sheets

Les Fusiliers Mont-Royal (Unit) **CASUALTY RETURN—OTHER RANKS.** attached to this return

Detail of casualties to other ranks which have occurred since last return. The detail should include all battle casualties, accidents, admission to and discharge from hospital, casualty clearing station, etc. Promotion (acting, temporary, local or substantive). Transfers, postings, attachments, etc., courts-martial, field punishment, forfeiture of pay, etc. Leave of absence, particulars of marriage and birth or death of children, alteration in next of kin with postal address, transfers to "X" List and any other items affecting a soldier's service.

Army No.	Rank	Name and Initials	Corps.	Nature and Date of Casualty.	Date.	Remarks. (In the case of casualties from wounds or disease, any available information for communication to relatives should be stated.)
ABSENTEES						
D 61983	Pte	Ferron F.	F?M.R.	A.W.L. from 2300 hours 2	Aug. 42	o300 hrs 7 Aug. 42
D 61136	-	Laurin R.	F.M.R.	A.W.L. from 2300 hours 2	Aug. 42	to 0300 hrs 7 Aug 42
D 61348	-	Audet G.	F.M.R.	A.W.L. from 2300 hours 6	Aug. 42	
D 61798	-	Quintal O.	F.M.R.	A.W.L. from 2300 hours 6	Aug. 42	
D 61344	L/Cpl	Charron A.	F.M.R.	A.W.L. from 0800 hours 1	Aug 42	
D 61084	Cpl	Fleury C.	F.M.R.	A.W.L. from 0800 hours 1	Aug. 42	
D 61919	Pte	Meilleur L.	F.M.R.	A.W.L. from 0800 hours 1	Aug. 42	
D 62164	-	Falcau P.E.	F.M.R.	A.W.L. from 2300 hours 2	Aug. 42	
D 61895	-	Kassab A.	F.M.R.	A.W.L. from 1800 hours 16	Jul. 42	

Amendments

Cas. Ret. d/3 Aug 42 insofar as it relates to D 61693 Pte Ferron R. is hereby cancelled

Certified True Copy [signature] for Adjutant,
Les Fusiliers Mont-Royal, C.A.O.

(Date) 7 Aug 42 19

C.C[illegible]maraire, Capt & Adu.
(Signature of Commander.)

Les Fusiliers Mont-Royal
(Unit).

6 Cdn Inf Bde.
(Bde., Depot, Area, etc., with which Unit is serving.)

Forms W.3011/1.

No. D62164 Name Falcar P.E. Squ., Batty., or Company "B" Corps F. M. R. Date of enlistment 4 June 40 Sheet No. 2

Date of last entry in Company Conduct Sheet | No. and date of last drunk | G.C. Badges | Long Service and G.C. Pay | Signature O.C. Company, etc.

Army Form B.122

Place	Date of offence	Rank	Cases of Drunkenness	Offence	Names of Witnesses	Punishment Awarded	Date of award or of order directing with trial	By whom awarded	Remarks
In the Field	6/8/40	Pte		Sec 15(2) Failing to appear on parade	C.S.M. LaPlante	1 day pay	9/8/40	J.A. Leclair	Major.
do	27/8/40	Pte		Sec 40(1) Conduct to the prejudice of good order & military discipline in that he argued with the N.C.O. when given the order	Sgt. Laguet	1 day pay	27/8/40	J.A. Leclair	Major.
do	7/6/40	Pte		Sec 11 R.D.R. Neglecting to obey Camp order - dirty rifle on parade	Sgt. Laguet	1 day pay	16/8/40	J.A. Leclair	Major.
On the 3 Dec 1940 this soldier completed six years service and is in accordance with K.O. 71. (O) the above entries were transferred from previous sheet which was then destroyed.									

M. Mathieu Capt.

P.T.O.

Wt. 15031/1883 1,000,000 H.P.Ltd. 51-7048 Forms/3122/4

Place	Date of offence	Rank	Cases of Drunkenness	Offence	Names of Witnesses	Punishment Awarded	Date of award or of order dispensing with trial	By whom awarded	Remarks
In the Field	25/5/41	Pte		1st 40 A.A. Conduct to the prejudice of military discipline Smoking at church parade	Sgt. Regault.	2 days C.B.	29 May 41	J.A. Leclaire Major.	
In the Field	20/10/41	Pte	1st	A.A. Sec 13 Drunkenness	under Grothé	Severe Reprimand	28/10/41	P. Grenier Lt Col.	
do	31/1/42	"		AA Sec 40. Neglect to the prejudice of good order in that in mess talking on parade	Sgt Drapeau Cpl Desmarais	one days pay F.R&I. 1940 (b)	12/2/42	P. Grenier Lt. Col.	
In the Field	28/2/42	"		A.A. Sec 40 Neglect in that he was improperly dressed on parade	C/C.S.M. Naulet M.	2 days pay F.R&I. 1940 (b)	29/2/42	P. Grenier Lt. Col.	
In the Field	31/1/42	"		A.A. Sec 15(1) Awl. from 2300 hrs 31 Dec until 2300 hrs 1 Jan 42. 1 day.	Sgt Desrosiers	1 days pay F.R&I. 1940 (b)	2-1-42	P. Grenier Lt. Col.	1 days pay F.R&I. 1940 (b)

Certified true copy

Adjutant
F.M.R. C.A.O.

(Substitute for A.F.B. 296)
or M.F.B. 365

STATEMENT OF CHARACTER AND PARTICULARS
OF SERVICE OF THE ACCUSED

No. 62164 NAME Private FALCAU P.E. UNIT Les Fusiliers Mont-Royal

AGE 22 MARRIED OR SINGLE Single No. OF DEPENDENTS None

DATE OF ATTESTATION 3rd June 1940

No. OF DAYS SPENT IN CLOSE ARREST (TO DATE OF TRIAL)

CIVIL Nil MILITARY 8 HOSPITAL Nil TOTAL 8 days

DATES OF PROMOTIONS? APPOINTMENTS AND CONFIRMATION OF RANK IF ANY

N I L

A CERTIFIED TRUE COPY OF M.F.B. 6 MUST ACCOMPANY THIS FORM

(Officer i/c Records)

Unit.

Les Fusiliers Mont-Royal
Canadian Army Overseas.

Dated at in the Field,

This day of Sept 1942

(To be dated and signed as of date of trial).

1035-6-46 (9532)
M.F.B. 9578
H.Q. 801-1-37

DEPARTMENT OF NATIONAL DEFENCE—OTTAWA, CANADA

SUBJECT

FIELD GENERAL COURT-MARTIAL

FALARDEAU, JEAN PAUL E-42164 Pte

-A-L-CP-

CENTRAL REGISTRY	DATE	P.A. OR D.F.	INITIALS	REFERRED TO	FO	INITIALS	DATE
				(If purpose for which returned cannot be expressed on one line enter here "With Minute")			2-12-46

OVERSEAS COMBINED

CONFIDENTIAL
H.Q.C. 55-F-880

NOTICE

1. Files should be retained no longer than absolutely necessary. If a file is frequently needed at short intervals, it is better to R.F. it for two or three days than keep it out of Central Registry indefinitely. This ensures it being completed and kept in order, and also gives other offices an opportunity to use same.
2. Central Registry should be notified whenever a file is passed direct to another branch.
3. All outgoing letters should bear the official file number.

PASS THIS FILE IN ENVELOPE

SCHEDULE.

PART I. PLEA(S), FINDING(S) AND SENTENCE.

Accused : E-42164 Pte (A/L/Cpl) Jean Paul FALARDEAU, R de Chaud, 13 CBR Bn

	Charge. (Insert "alternative" where applicable.)	Plea. (See Instrs p 2.)	Finding. (See note below.)	(Space for use as required for further charges, accused charged jointly, special findings, etc.)
1st	1 2 (1) (b)	Not Guilty	Not guilty of desertion but guilty of absence without leave for period set out in charge sheet	
2nd				
3rd				
4th				
5th				
6th				

(Note : As to findings for lesser offences see AA 56, RP 44 ; findings on alternative charges see MML p 483 fn 4 para 2, RP 44 ; special findings see RP 44 and MML p 753, and in loss of kit see RP 44 fn 6.)

EE At present under sentence for ~~6~~ beginning on (date) ~~(1)~~

(1. Insert sentence being served, or delete, if not applicable. See RP 46(A). Information should be found on MF B355 or AF B296.)

Time in confinement awaiting present trial—a total of 68 days, of which Nil days were spent in hospital.(1)

(1. See RP 46(A) fn 2. Information should be found on MF B355 or AF B296 admitted in evidence under E2.)

Sentence Awarded by the Court :

to undergo detention for a period of sixty days

(Sgd) C E Chamberlain Capt 16 Oct 44 (Sgd) J F Kibler major
Judge-Advocate, if any. Date awarded. President. (RP 45, 50.)

(See back of Convening Order as to assembly and disposal of record after trial.)

PART II. MINUTE WHERE CONFIRMATION RESERVED. (AA 54(5), RP 120(F), MML p 760.)

Date ..... (Sgd) ..... Commanding .....

PART III. DECISION OF CONFIRMING OFFR ON FINDING(S) AND SENTENCE.

(For duties and powers see AA 54, 57, RP 37(D) fn 6, 46(A), 51-56, 120, MML pp 759-761, KR Can 567-577. Acquittals require no confirmation and cannot be revised : AA 54(3). Sending back finding or sentence for revision by Court : AA 54(2), RP 120(C). If not confirmed, accused may be tried again : AA 157, MML p 64. Minute of confirmation or non-confirmation may be altered before promulgation : RP 53, MML p 65. Quashing after promulgation : KR Can 573. Duties and powers of reviewing offrs : AA 57, 57A, RP 53A, 54. The Confirming Offr must sign here personally. AA 172 fn 1.)

My decision on the finding(s) and sentence set forth in Part I is :

Confirmed

~~I direct that the accused be not committed to prison or detention barracks until further orders.~~(1) (1. AA 57A. Delete if not used.)

(Sgd) G Stanley

Date 17 Oct 44 Commanding 2 C B R G Brig Confirming Officer.

PART IV. PROMULGATED AND EXTRACTS TAKEN. (RP 53, KR Can 576, 577.)

Accused. E-42164 Pte(A/L/Cpl) FALARDEAU, J.P, R de Chaud, 13 CBR Bn. Date. 18 Oct 44 C.R. No. 1 A. Signature of OC. 18 Oct 44 W. A. F. Capt Adjt 13 C. B. R. Bn.

ALL DELETIONS AND ALTERATIONS WILL BE INITIALLED.

RECEIVED 28 OCT 1944 JAG BRANCH G.H.Q.

RECORDED AT CMHQ IN AB 160, 4C-24

FIELD GENERAL COURT-MARTIAL

CFA96 (In lieu of AFA3) 10/P & S/1698 (2864)

Convened by Order of Brig G Francoeur Comd 2 CBRG dated 14 OCT 44

ACCUSED.

(As to the trial of two or more charged jointly see RP 16, 71, 109. As to reasons for showing (a) permanent rank, and (b) apptmt, A/rank or A/apptmt, if any, see AA 182, 183, fns, KR Can 308, 328, 330.)

Number	(a) Prmnt R. (b) Appmt, A/R or A/Appmt.	Full Christian Names.	Surname.	Unit.
E-42164	Pte (A/L/Cpl)	Jean Paul	FALARDEAU, J.P.	R de Chaud, 13 CBR Bn

PROCEEDINGS REVIEWED R. Lawrence Lt 30 Oct 44 REVIEWING OFFICER, JAG B...H.Q.

PROCEEDINGS REVIEWED Date 22 Oct 44 Cdn Sec GHQ 21 Army Gp

PROCEEDINGS OF TRIAL.

Held in the Fd in (country) BELGIUM on (date(s)) 16 OCT 44

RECORD FORM A—OPENING PROCEEDINGS AND ARRAIGNMENT. 12/16

A1. The President, Members, waiting Member, JA, if any, and Offrs under instr, if any, assemble, and the Court is closed.

(PRINTED MATTER, NOT IN ITALICS FOR GUIDANCE, WILL BE DELETED, IF NOT USED OR APPLICABLE, AND INITIALLED BY PRES OR JA. The Schedule referred to throughout is on p 4. Citations do NOT include all relevant fnn RQs. For guidance on procedure when a variation in this form arises, see form for GCM in MML pp 741 to 759. A brief record of such variation will be made and given a number having reference to appropriate or preceding para number herein. See back of Convening Order, CF A95, for oaths and instrs on how to record addresses, evidence, etc, which instrs are hereafter called "Notes". As to general provisions for conducting the trial see AA 53, RP 56, 63-70, 73, 74, 94, 103, 119, 132.)

A2. The President initials and lays before the Court the Convening Order and Charge Sheet(s) attached thereto.(1) The Court is satisfied that it is properly convened and constituted(2), accused is (~~are~~) amenable to military law, and each charge discloses an offence.(3)

(1. As to use of Summary of Evidence see RP 17 fn 6. 2. AA 49, 50, RP 105-107. 3. RP 11-13, 23, 24.)

A3. The Court is opened. The accused is (~~are~~) brought before the Court. At 1000 hours trial commences.

A4. The Prosecutor produces a Medical Certificate that accused is (~~are~~) fit to undergo trial by court-martial.(1) ~~The Prosecutor informs the Court that accused elected to be tried by court-martial instead of being dealt with summarily by the CO.~~(1)

(1. KR Can 557. 2. AA 46(8), RP 60 fn 1. For effect see KR Can 563(c). Delete, if not applicable.)

A5. President to accused : Do you object to C.H.S.M. ROSS as interpreter ? Ans Nil

The Interpreter is sworn.(1) ~~Do you object to C.S.M. ROSS as shorthand writer ? Ans~~ ~~The shorthand writer is sworn.(1)~~

(1. RP 72. Delete, if none employed.)

A6. The Convening Order and names of the President and Members of the Court are read to the accused.(1) President to accused : Do you object to be tried by me as President or by any of the Members of the Court ?

Ans No Sir (2)

(1. RP 110. 2. If no objection, waiting member retires. RP 68(8). If objection, see procedure AA 51, RP 25, 71, 18, MML p 742.)

A7. The President, Members, JA, if any, and Offrs under instr, if any, are sworn.(1) The following are the ranks, names and units of the offrs comprising the Court, etc :

President	Major	J F KIBLER,	RCA,	12 CBR Bn
Member	CAPT	D.F SEELY	CIC	11 CBR Bn
Member	LT	W P GREGORY	CIC	11 CAR BN
Judge-Advocate	Capt	R E PEARLMAN,	ADJA,	HQ 2 CBRG
Prosecutor	CAPT.	G.A. McVEY	CIC	13 CBR Bn
Defending Offr	CAPT.	M.A. FRANK	RCE	13 CBR Bn

Questions by President : Is the Prosecutor a lawyer ? Ans N.O. Is the Defending Offr a lawyer ? Ans N.O.(2)

(1. RP 26, 27, 109, 111. List of offrs under instr will be returned separately with proceedings for information of Conv Offr.)
(2. If Pros a lawyer and Def Offr not, accused is entitled to an adjournment when RP 89 (8) and fn 2 were not followed. See DI p 3.)

A8. The accused E-42164 Pte (A/L/Cpl) FALARDEAU J.P. before arraignment make(s) (no) ~~(1)~~ plea (1)

(1. If a special plea is made for separate trial on one or more charges (RP 62(E), 108), or as to the jurisdiction of the Court (RP 34, 35(A), 113), or in bar of trial (RP 36), or as to accused's mental fitness to stand trial (AA 130, RP 57), or by one of several accused charged jointly to be tried separately (RP 16, 71), such plea, the addresses made in support or against, the evidence, if any, and finding are recorded per Notes. For forms of record see references in fns to RsP cited. Insert in A8 rank and name of the accused making the plea.)

A9. The accused is (~~are~~) arraigned (~~severally~~) on all charges in the charge sheet.(1) The accused does (~~do~~) not object to any charge.(2) There is no amendment to be made to the Charge Sheet.(3) The President records the pleas in Part I of the Schedule.

(1. RP 31, 112. See para 1 of Instrs p 2. When more than one Charge Sheet see RP 62 ; when several accused to be tried separately see RP 71(C), and use separate copies of CF A96 to record proceedings. 2. RP 32, RP 33. If otherwise, delete and make appropriate record per Notes.)

A10. The Court (~~is closed and~~) considers the Instrs on Procedure after Arraignment at top of p 2. The proceedings are continued on Record Form 2.

PRESIDENT OR JA WILL INITIAL ALL DELETIONS AND ALTERATIONS.

2C BRG Vol 2 p 29

INSTRUCTIONS ON PROCEDURE AFTER ARRAIGNMENT.

1. *The accused may not plead or be found Guilty on more than one of two or more charges laid in the alternative.* (*RP* 37(*A*).) *As to withdrawal of alternative charges by Prosecutor see RP* 35(*C*). *No other charge can be withdrawn for any reason without authy from Convening Offr. If Convening Offr concurs, Court may accept plea of Guilty to lesser, etc, offence.* (*RP* 44(*H*).) *Accused may change a plea of Not Guilty to Guilty during trial.* (*RP* 38.) *As to refusing to plead or not pleading intelligibly see RP* 35(*A*). *As to plea when sentence may be death see RP* 35(*D*).

2. *The proceedings on each charge sheet* (*RP* 62) *after arraignment will be conducted as follows in the respective circumstances stated :*

I. If pleas to all charges are GUILTY, use Record Form B below.

II. If pleas to all charges are NOT GUILTY, use Record Form D on p 3.

III. If pleas to some charges are GUILTY and to other charges are NOT GUILTY and,

(a) Such mixed pleas occur when there are no alternative charges in the Charge Sheet, use Record Form C below. (*RP* 37(*A*).)

(b) Such mixed pleas occur in a set of two or more charges laid in the alternative, see RP 37 (*A*) *and fn* 2 *as to discretion of Court,* (i) *to try the accused on all such alternative charges as if he had pleaded Not Guilty thereto, or,* (ii) *to record the pleas as the findings of Court. After deciding between* (i) *and* (ii), *Court will proceed under foregoing instrs as may be appropriate to result of its decision. See MML p* 744 *Instrs* (2).

3. *As to responsibility of President to accused see RP* 59, 60(*C*) ; *powers and duties of JA see RP* 103 ; *duty of Prosecutor see RP* 60(*A*) (*B*) ; *duty and privilges of accused and Defending Offr see RP* 60(*C*), 87(*C*), 91, 92 ; *swearing and withdrawal of witnesses from Court see RP* 81, 82 ; *questioning of accused see RP* 80, 87(*C*), 92(*B*), *and of witnesses see RP* 83-85 ; *calling or re-calling of witnesses by Court etc see RP* 75-79, 86, 116 ; *use of Summary of Evidence at Trial see RP* 17(*E*) *fn* 6 ; *and responsibility of JA or Pres to record proceedings see RP* 94, 96.

RECORD FORM B—PROCEEDINGS ON PLEAS OF GUILTY TO ALL CHARGES.

B1. The President or JA, if any, complies with RP 35(B) by explaining to the accused the nature and meaning of the charge(s)(1), and that on his plea of Guilty there will be no regular trial but merely a consideration of the sentence to be awarded after he has been given an opportunity to make a statement in reference to the charge(s), call witnesses as to character and make an address in mitigation of punishment.(2)
(*1. RP 35 fn 3. 2. MML p 54 para 47.*)

B2. President to accused : The Court will now receive any statement you desire to make in reference to the charge(s).(1) If it appears from your statement that there are circumstances which indicate that you do not understand the effect of the plea of Guilty(2), or which show provocation or extenuation in respect of which in your interest the witnesses for the Prosecution should be examined(3), we shall advise you to change your plea to Not Guilty. In making a statement you will not be sworn or subject to cross-examination ; and anything you say will not be used in evidence against you after you change your plea. If, however, it appears to the Court that your statement affects only the amount of punishment to which you are liable, you will not be advised to change your plea and you will be given an opportunity later to prove your statement by sworn testimony, if you so desire.(4)

President to accused : Do you wish to make a statement ? Ans.....(5)
(*1. RP 37(B). 2. RP 37(D) fn 6. 3. RP 35(B), fn 5 para 3, MML p 54 para 47. 4. See para E3 of Record Form E. 5. Statement, if any, recorded per Notes.*)

B3. The Court considers the accused's statement.(1) The Court decides (not) to advise accused to change his (their) plea(s) of Guilty to Not Guilty on.....charge(s). The accused is (are) so informed, and he (they) change(s) his (their) plea(s) on.....charge(s). Part I of the Schedule is amended accordingly.
(*1. Court may be closed to consider the statement. Delete whole or part not used.*)

B4. On the charge(s) to which the plea(s) of Guilty is (are) not changed the President records finding(s) of Guilty in Part I of the Schedule.(1)
(*1. RP 35(B). If any plea(s) is (are) changed, use Record Form C or D as appropriate.*)

B5. The Summary of Evidence is marked Ex....., initialled and read aloud by the President.(1)
(*1. If there is no Summary, or if it is inadequate, comply with RP 37(B). If there is any evidence inconsistent with any plea standing as Guilty, Court will advise accused to change such plea and, if changed to Not Guilty, try such charge(s) by use of paras D1 to D8 inclusive of Record Form D on p 3. RP 37(D).*)

B6. The accused having been found Guilty on one or more of the charges, the proceedings are concluded by using Record Form E on p 3.

RECORD FORM C—PROCEEDINGS ON MIXED PLEAS OF GUILTY AND NOT GUILTY.

C1. As to the charges on which accused pleaded NOT GUILTY the trial is continued by using paras D1 to D8 inclusive of Record Form D on p 3 before proceeding with C 2.(1)
(*1. RP 37(A) (E).*)

C2. The charges on which accused pleaded GUILTY are read to him (them) again, and the trial is continued by using paras B1 to B5 of Record Form B above.(1)
(*1. Under B5 such parts only of the Summary of Evidence are read as relate to the charges dealt with under C2. If any plea is changed to Not Guilty, trial thereon proceeds by complying with paras D1 to D8 inclusive in Record Form D on p 3 and making an appropriate record thereof on a separate sheet.*)

C3. The accused having been found Guilty on one or more of the charges, the proceedings are concluded by using Record Form E on p 3.

PRESIDENT OR JA WILL INITIAL ALL DELETIONS AND ALTERATIONS.

RECORD FORM D—PROCEEDINGS ON PLEAS OF NOT GUILTY TO ALL CHARGES.

D1. President to accused : Do you wish to apply for an adjournment on the ground that any of the rules relating to procedure before trial have not been complied with, and that you have been prejudiced thereby, or on the ground that you have not had sufficient opportunity to prepare your defence ? Ans. NO SIR.....(1)
(*1. If "yes", see RP 39(A) for procedure. Statement or evidence, if any, is recorded per Notes.*)

D2. The Prosecutor makes (his) (no) opening address.(1)
(*1. RP 39(B), 60(A) (B), 90, 92(C) (D). Record address per Notes, subject to RP 95(C).*)

D3. The evidence for the Prosecution is taken.(1)
(*1. RP 39(C), 114, KR Can 555. Record evidence per Notes. As to Prosecutor giving evidence himself see RP 39(D) (E).*)

D4. The Prosecution is closed.(1) The Defending Offr submits that the evidence for the Prosecution does not establish a prima facie case against the accused on the.....charge(s).(2) The Court is closed, and considers the submission.(3) The Court is re-opened, and the President announces that the submission is disallowed on the.....charge(s), and allowed on the.....charge(s), and that, accordingly, the trial will proceed on the former, but the accused is (are) found Not Guilty on the latter charge(s).(4)
(*1. Delete remainder of this para, if submission not made. 2. Arguments on submission, answer and reply are recorded per Notes. 3. RP 40 fn 1. See MML p 72 paras 12-14 and p 81 para 42. 4. Delete part not used. If accused acquitted on all charges, use second alternative in para D8.)*
NB : If trial proceeds, accused must be allowed great latitude in making his defence, and the Court should not stop his defence solely on ground of irrelevance. (*RP 60(C), 114, 115.*)

D5. President to accused : You will now proceed with your defence.(1) You may, if you wish, give evidence yourself on oath as to the facts or your character or both, in which case you will be subject to cross-examination.(2) You may, however, make a statement without being sworn, and you will not be subject to cross-examination.(3) But a statement which could have been made on oath will not carry with the Court the same weight as sworn testimony.(4) You may call witnesses in your defence and as to character, whether you give evidence or make a statement or do neither.

President to accused : Do you wish to give evidence yourself as a witness, make a statement, or do neither ? Ans. I wish to give evidence on Oath. Do you intend to call witnesses on your behalf ? Ans. NO SIR. Are they witnesses as to character only ? Ans. [redacted]
(*1. RP 155. 2. RP 40(A), see 80(D). 3. RP 40 fn 10. 4. RP 40 fns 2, 9.*)

D6. Consequent on the answers recorded in para D5 the appropriate procedure for the defence is followed.(1)
(*1. RP 114, 115, 116. For procedure see Notes on back of Convening Order, CF A95. Evidence for accused as to his character should, if in his interest, be given before the finding. See RP 46(A) fn 1, 86(C). Note the further opportunity in para E1 of Record Form E. Record per Notes addresses, statement, evidence and any summing up by the JA under RP 42, 103(e).*)

D7. The Court is closed to consider the finding(s).(1) The finding(s) of the Court is (are) recorded in Part I of the Schedule.(2) The Court is re-opened.
(*1. RP 43, 117(A). See Notes in Part I of Schedule. 2. RP 44(A).*)

D8. The President announces the finding(s), if any, of Not Guilty, and states to the accused that the finding(s) of the Court on the.....charge(s), being subject to confirmation, will be promulgated later.(1)
Or, The President announces that the accused is found Not Guilty on all charges and is to be released forthwith, and that the proceedings are accordingly terminated. Part I of the Schedule is dated and signed.(2)
(*1. AA 54(3) (6), RP 45, 120(A). 2. AA 54(3), RP 45, 117. This alternative announcement is not applicable when there are pleas of Guilty outstanding and dealt with under Record Form B or C.*)

D9. The accused having been found Guilty on one or more of the charges, the proceedings are concluded by using Record Form E below.

RECORD FORM E—PROCEEDINGS ON CONVICTION BEFORE SENTENCE.

E1. President to accused : Do you wish to give evidence yourself or to call any witnesses as to your character ?(1) Ans. NO.
(*1. If evidence has already been given by accused or his witnesses as to his character, delete this para. RP 37(C) fn 4, 46 fn 1. Accused and witnesses are sworn. Evidence recorded per Notes.*)

E2. The Prosecutor produces Statement(s) as to Character and Particulars of Service(1), and certified true copy (~~copies~~) of Conduct Sheet(s)(2), purporting to refer to the accused, which he submits to the Defending Offr for examination, and then to the Court for admission in evidence. The Court is satisfied that these documents refer to the accused, because (i) they purport to be signed in the manner required by AA 163(1) (g) (h), and (ii) they purport to refer to (a) soldier(s) having the same number, rank, name and corps as the accused. Admitted in evidence and marked Ex. P1 and Ex. P2 respectively.(3)
(*1. MFB 355 or AFB 296. 2. MFM 6. 3. RP 46, KR Can 558. If above documents not produced, see RP 46 fn 1 para 1.*)

E3. President to accused : Do you wish to address the Court on the Statement(s) and Conduct Sheet(s), and in mitigation of punishment ?(1) Ans. NO SIR.....(2)
(*1. RP 37(C), 46(D). 2. Address, if any, recorded per Notes. Court should permit accused or his witnesses to prove on oath anything here or previously stated which would affect the amount of punishment. RP 37(F) fn 7.*)

E4. The President states that the Court is closed to consider the sentence, and that the sentence to be awarded by the Court, being subject to confirmation, will not be announced, but will be promulgated later, and the proceedings in open court are accordingly terminated.(1)
(*1. AA 54(6), RP 120(A).*)

E5. The Court considers the sentence.(1) The President records the sentence in Part I of the Schedule, which is dated and signed by him and the JA, if any.(2)
(*1. When several accused tried separately see RP 106. One sentence only, comprised of the punishment or punishments laid down in AA 41, 44 and its proviso, is to be awarded to cover all charges in all charge sheets on which accused found guilty. RP 48. As to sentences see AA 44, 138, 182, RP 46-50, 69, 118, 119(A), KR Can 308, 330, 563-566, Overseas RO 309, 2323, MML p 60, 757-759. As to sentences assigned for civil offences by the law of England see AA 41(5), MML p 130. When accused already under sentence of imprisonment or detention see AA 44(13), 68(1), KR Can 564. 2. RP 50. As to release from arrest by Confirming Offr see KR Can 567. As to assembly and disposal of record after trial see Instrs on back of Convening Order.*)

PRESIDENT OR JA WILL INITIAL ALL DELETIONS AND ALTERATIONS.

CHARGE SHEET

The accused, E-42164 Pte (A/L/Cpl) Jean Paul VALARDEAU, R de Chaud, CIC, 46 Fwd Rft Coy, 13 CBR Bn, 2 CBRGp, a soldier of the Canadian Army Overseas, is charged with:-

First Charge
AA Sec 12(1)

WHEN ON ACTIVE SERVICE, DESERTING HIS MAJESTY'S SERVICE

in that he

In the Field, at 1530 hrs 29 Jul 44, after having been warned for a draft proceeding to a Field Unit in a forward area, with intent to avoid so proceeding, did absent himself without leave from 1530 hrs 29 Jul 44 to 1545 hrs 8 Aug 44. (Total absence 10 days, 15 mins)

(W Stewart) Lt-col
Commanding,
13 CBR Bn, 2 CBRGp

In the Field
13 OCT 44

TO BE TRIED BY FIELD GENERAL COURT MARTIAL

(G Francoeur) Brig
Comd
2 Cdn Base Rft Gp

In the Field
14 OCT 44

FIELD GENERAL COURT-MARTIAL

(Whether the accused to be tried is under his comd or not, a FGCM may on application to him be convened by any offr of Cdn Army Overseas, or of any other force if authorized in law, in immediate comd of troops on active service, subject to RP 105(C) and restrictions imposed by appropriate authy. AA 49, 50, RP 104-107, 114. As to the duties and privileges of the Convening Offr in dealing with the application see MML Chap V paras 20 and 23, RP 87(B).

There should be a separate Convening Order for each person to be tried separately by the same Court. RP 71(C), 109. As to separate charge sheets see RP 62, and as to separate trial on charges in the same charge sheet see RP 108. As to two or more accused charged jointly see RP 16, 109.

As to reasons for showing (a) permanent or confirmed rank, and (b) appmt, A/rank or A/appmt, if any, see AA 182, 183, fns, KR Can 308, 328, 330.)

ACCUSED.

Number.	(a) Prmnt R.	(b) Appmt, A/R or A/Appmt.	Full Christian Names.	Surname.	Unit.
E-42164	Pte	(A/L/Cpl)	Jean Paul	PALARDEAU	R de Chaud, 13 CBR Bn

CONVENING ORDER.

1. Whereas complaint has been made to me, the undersigned, that the person(s) named above as the accused, being subject to military law, has ~~(have)~~ committed the offence(s) set forth in the Charge Sheet(s) attached and on (*date*) 14 OCT 44 endorsed by me, ~~(or by an offr acting staff for me)~~, "To be tried by Field General Court-Martial".

2. And whereas I am of opinion that it is not practicable that such offence(s) should be tried by an ordinary General Court-Martial; ~~(and that it is not practicable to direct the trial for reference to a superior qualified offr.)~~

(Delete part in brackets when not required for compliance with RP 105(C).)

3. I hereby convene a Field General Court-Martial to try the said person(s), and to consist of the Offrs appointed or detailed hereunder.

4. ~~I am unable to appoint (a) three Offrs to form the Court, (b) a Fd Offr as President, for the reasons I have attached hereto.~~

(AA 49, RP 106(B), 107(A). Delete the whole or part, if not applicable.)

5. I also appoint as Judge-Advocate thereat the Offr mentioned hereunder.

(RP 106(E). Delete, if none appointed.)

PRESIDENT.

(Rank.)	(Must be named. RP 106.)	(Unit.)
Major	J F KIRLER RCA,	12 CBR Bn

MEMBERS.

(Rank.)	(Named or detailed. RP 106.)	(Unit.)
Capt	To be detailed by OC 11 CBR Bn	11 CBR Bn
Lieut	To be detailed by OC 11 CBR Bn	11 CBR Bn

WAITING MEMBER.

(Rank.)	(Named or detailed, if any. RP 106.)	(Unit.)
Capt	To be detailed by OC 12 CBR Bn	12 CBR Bn

JUDGE-ADVOCATE.

(Rank.)	(Must be named, if any. RP 106.)	(Unit.)
Capt	R E PEARLMAN,	ADAA, HQ 2 CBBG

On Active Service in the Fd

in BELGIUM (Country.)

G Francoeur (Signed personally. RP 105 fn 2.) Brigadier (Rank.)

(G Francoeur)

Date 14 OCT 44

Commanding 2 Cdn Base R't Gp

Convening Officer.

CONVENING OFFR WILL INITIAL ALL DELETIONS AND ALTERATIONS

4/38A CPAAS (To item of AFAS) 10/5 & 6/1697 (4651)

(See overleaf for oaths and notes for use on trial.)

MEDICAL OFFICERS CERTIFICATE

(AR(Can) Para 557)
(CMHQ CL 173)

I certify that I have this day examined E-42164 (No.)

L/Cpl (Rank) Falardeau J.P. (Name) and in my opinion he is

~~fit~~ unfit to undergo trial by Court-martial.

Station Field

Date 16 Oct 44

R. Laing Capt. (Sgd),
Medical Officer

(Unit) 13 CBR Bn. 2 CBR Gp.

? D.3

1st Witness for the Prosecution

K. 42 [illegible] Sgt. Jackson, R. H. G. 46 Coy 13 CSRA

duly sworn states —

At 1000 hrs 29 July 44 I called the roll for a draft for the Regt de Chaudiere the accused was at that time present and answered his name. I told the persons on the draft that they were on draft & to remain in the area & that transport to pick them up would arrive some time in the morning. The draft was in full marching order & I had no reason to believe that my warning was not understood. Transport did not arrive that afternoon so arrangements were made for the men to be fed. I told them to report back immediately after eating to the same area. Transport arrived at 1530 hrs that day & I once again called the roll - the accused did not answer his name. The accused's kit was still lying on the ground & on being checked it was found his mess tin had been washed & put away. Thinking the accused might still be in the area I made a search but could not find him. Transport with the draft left at 1540 hrs 29 July 44 but the accused was not on it. I did not see the accused again until 1545 hrs on the 5th Aug. 44. He reported in to the Coy Orderly room properly dressed. He was immediately put under close arrest.

Cross Examn

There were approx 20 men on the draft they were all Chaudiere men. It is quite possible they did not understand my meaning I can't remember whether or not I had my warning translated into French.

There was no written order or warning read to any of the drafts or to this draft. I did not tell the men they might be charged with desertion if they missed this draft.

By the Court

Q. Do you know the accused personally?

Ans. Yes Sir - he had previously gone through the corp on two occasions.

Q Does he understand English?

Ans. Not to my knowledge

Q Had the accused been on drafts before where the same procedure has been followed.

Ans. yes Sir on two occasions, and he proceeded with these drafts.

By the J.A.

You knew the accused could not understand English

yes Sir

You gave ~~all~~ your instructions and warning in English

yes Sir

did you translate your instructions & warning into French

I don't remember.

D 6

For the defence

The accused Pte (A/L/Cpl) J.P. Malardeau Reg. No. Chand. 13 C.A.B.C. duly Sworn states —

I arrived in France on D-Day & fought in the front line for 35 days, my conduct was always good. On D+35 at night a bomb fell ten feet from me I received a nervous shock & was brought to # 7 F.D.S. I remained there 4 days during which I was well looked after. When I left there I was told I was going on a rest. From there I was sent to B Echelon to return to the front lines. I arrived at the front at night & was only there 15 or 20 minutes when a shell hit the house I was in & I was knocked unconscious for about 5 minutes. I stayed all night at the M.I.R. & was evacuated to Harfleur the next morning where I remained for 3 days & again I was not examined. I was again returned to the forward area # 46 Forward Coy & I was there for 2 or 3 days before going absent. When I went absent I did not think the draft was going to leave - having been there on 2 previous occasions I had been warned for draft & the draft had not left. When I left I had no intention of deserting I fully intended to return I went for a rest & as soon as I felt rested I returned to the Coy. Since that time I have been with 13 Bn.

On the two previous occasions I had been on draft ~~to Rouen~~ I had been warned by a French speaking N.C.O & fully understood when the draft would leave. On this occasion I was not warned in French.

No cross Examn

By the Court

Q On the 29 July 44 did you know you were on draft
A. I did not understand anything of what was said
I did not know I was on parade
Q. Did you not ask any of your friends what had been said at the parade
A. I did not pay any attention.
Q. How did you get on the parade
A. my name was called & I does not change
Q. Did you have all your equipment with you
A. Yes Sir
Q. Why did you have it with you.
A. I had asked if I should bring all my equip & I was told yes. I did not ask where we were were going

I knew that I was on a draft but I did not know when the draft was leaving.

By the J / A.

Do you understood English at all
I do not understand it at all.

You admit being A W L. from 15 30 hrs 29 July 44 until 1545 hrs 8 Aug. 44
A. I do Sir.
Q Why did you go absent at that time
A. I could not continue any longer — I absented myself for a rest.
Q Had you been examined by a M. O. on the 29th July
A. I had not. The only time I saw a M. O. was on the two occasions I went to a hosp. & all I was told was that I needed a rest.

D 6 (Cont)

By the J.A (Continued)

On the 29 July July 44 I had knowledge that I was on a draft which might be leaving that day.

The Deft. Officer Sums up

I point out that on both previous occasions when the accused went forward he had been warned in French the only language he understands. On this occasion he was not. When asked why he paraded he stated "my name was called & Falardeau is my name in English or Fr. therefore I went on parade."

The evidence of the N.C.O i/c parade Sgt. Jackson inclines to bear out the fact that no warning was given in French. The witness stated he did not remember whether warning given in English or French.

E&E

The Prosecuting Officer sums up

As an N.C.O. I have been through the forward Coy on two previous occasions the accused must have been aware that the parade was called for mustering to go fwd to the unit. He deliberately left the area without endeavouring to find out any particulars from his friends. I think therefore that this is a definite case of desertion because he was not a raw recruit going forward.

D.C.L.

The Judge Advocate Addresses the Court -

The accused is charged with a special type of Desertion - that is, after being warned for draft with intent to avoid proceeding on said draft absented himself without leave.

The test between Desertion & A.W.L. is intent but in this special type of desertion the intent to be proved is not whether the accused intended to return to the Army but whether he intended to avoid the draft for which he was allegedly warned.

Accordingly it is for the Prosecution to prove the following

(a) That the accused was warned for draft
(b) That the accused heard and understood the warning
(c) That the accused was A.W.L.
(d) That the accused was A.W.L. with intent to avoid the said draft
(e) That the draft did in fact proceed

The accused has admitted being A.W.L. for the period set out in the Charge Sheet but denies that he was warned or more accurately that he heard & understood the warning. Unless of course he was properly warned & understood the warning there can be no suggestion of being A.W.L. with intent to avoid the said draft. One cannot intend to avoid something of which one is unaware.

The Prosecution must prove the accused guilty And it is not for the accused to prove himself innocent.

The accused is entitled to the benefit of any reasonable doubt — a reasonable doubt being one based on the facts & one which an ordinary reasonable person would entertain on those facts and not an imaginary doubt.

The Court may find the accused

(a) Not Guilty of any offence or

(b) Not Guilty of desertion but Guilty of absence or

(c) Guilty of desertion.

I have no further comment unless the Court or the Pros or Def. Officers desire further advice to be given the Court

Exhibit "A" - E.2

ARMY FORM B.296.

Statement as to Character and Particulars of Service of Accused.

Number.	*Rank.*	*Name.*	*Regiment (or as the case may be)*
E.42164	Pte.(A/L/CPl.)	FALARDEAU, J.P.	Regt.de la Chaud.,C.I.C.

1. The following is a fair and true summary of the entries in the regimental and squadron, battery or company conduct sheets† of the accused, exclusive of convictions by a court martial or a civil court, of summary awards under section 47 of the Army Act, and of cases in which trial has been dispensed with :—

NOTE.—At a trial by field general court martial this summary may be compiled from the field conduct sheet. The conduct sheet(a) mentioned should be produced in court with this statement but not annexed to the proceedings.

† See para. 677, K.R., 1940.

* The numbers herein stated should correspond with the number of entries in the conduct sheets, prominence being given to the most serious offence in each entry, and to any recognised special acts of gallantry or distinguished conduct.

INSTRUCTION.—If the charge is for drunkenness the entries for drunkenness must be stated separately and dated.

	* Within last 12 months.	* Since Enlistment.
For	times	times
For	times	times
For	times	times
For	times	times
For	times	times

Number of instances of gallantry or distinguished conduct, Nil

or

There are no entries in the conduct sheets of the accused. Nil

2. The accused has not been previously convicted, ~~xx~~

~~Previous convictions of the accused by a court martial or a civil court, summary awards under section 47 of the Army Act, and dispensations with trial under section 53 of the Army Act, are set out in the schedule annexed to this statement.~~

3. The accused is not under sentence at the present time, ~~as follows: the accused at the present time is under sentence of imprisonment for~~ ~~imposed on the day of~~

4. The accused has been in confinement, awaiting trial on the present charges, for Nil days in civil custody, and ~~Seventeen~~ 68 days in military custody, making a total of ~~Seventeen~~ 68 days, of which Nil days were spent in hospital.

5. The present age of the accused according to his ~~regimental debit~~ attestation paper is 24 Years.

6. The date of his ~~question~~ attestation specified in his ~~enlistment~~ attestation paper is 2 July, 1941.

7. The service which the accused is allowed to reckon towards discharge or transfer to the reserve is 3 Yrs.26 days

8. The accused is entitled to deferred pay or gratuity in respect of service.

9. The accused is entitled to reckon 3 Yrs., 26 days. service for the purpose of determining his pension, etc.

10. The accused is in possession of, or entitled to, no military decoration or military award (*or* is in possession of *or* entitled to (*state any military decoration or reward*). CVS.Medal & Clasp.

11. ~~(If the accused is a warrant officer.) The accused holds the rank of~~ ~~was made a warrant officer on the~~ ~~of~~

12. (*In the case of an officer.*) The accused holds in the army the rank of ~~xxx~~ dated ~~and in the regiment (or corps or department) the rank of~~ dated

W1.5932/1319 20M. 5/44. P. Ltd. TH 2.

Schedule of Convictions by a Court Martial or Civil Court, of summary awards under Section 47 of the Army Act and of cases in which trial has been dispensed with of accused.

No. _____ *Rank* _____ Name _____ of _____ Regiment (or as the case may be).

(INSTRUCTION—A verbatim extract from the regimental books, stating these convictions and dispensations with trial, must be inserted.)

Description of court by which tried, or status of officer disposing of the charge or dispensing with trial.	Date and place of trial, or summary award under A.A. 47, or of order dispensing with trial.	Charges upon which convicted, or in respect of which trial was dispensed with.	Sentence of the court or authority disposing of the charge, or order of the dispensing authority.	Punishment remitted.

I HEREBY CERTIFY that the foregoing schedule of convictions and dispensations with trial is a true extract from the regimental books in my custody.

Signed this 28th day of Aug. 1944.

16 M.F.

Officiating Adjutant

13. The accused has served as a non-commissioned officer continuously, without reduction, to the present date.

In the rank of Acting Lance Corporal. Date of Promotion 27 Mar.44.

years.

In the rank of years.

In the rank of years.

(INSTRUCTION—*If any matter in any of the above paragraphs cannot be stated from the regimental books the paragraph must be struck through, except that in the case of a trial by field general court-martial the information may be collected from such reports as are available and the paragraph retained amended accordingly.*)

2 Jul 41 Exhibit B-E.2

M.F.M. 6
(A.F.B. 122)
40/P & S/136 (2637)

FALARDEAU, Jean-Paul

No. E42164 Name | Sqn., Battery, or Company | Corps R deChaud | Date of enlistment | G.C. Badges | Service or Proficiency Pay

Date of last entry in Company Conduct Sheet | No. and date of last drunk | Period not reckoning towards freedom from extra fine | Sheet No. | Signature O.C. Company, etc. | Character

Place	Date of offence	Rank	Cases of drunkenness	OFFENCE	Names of Witnesses	Punishment awarded	Date of award or of order dispensing with trial	By whom awarded	Remarks
				No entries					E.O.B. JTK
				CERTIFIED TRUE COPY OF EXTRACTS FROM MFM 4 - 17 AUG 44					
				R.T. Saunders (B.T. SAUNDERS) Captain Officer i/c X-List Records CdnSec GHQ 2nd Echelon - 21 Army Group					

(P.

SUMMARY OF EVIDENCE IN THE CASE OF E.42164 Private (A/L/Cpl.) Jean Paul FALARDEAU, Regt.de la Chaud., C.I.C., 46 Fwd.Rft.Coy., 13 CBR Bn., 2 CBR Gp., A Soldier of the CANADIAN ARMY OVERSEAS, is CHARGED WITH:-

WHEN ON ACTIVE SERVICE, DESERTING HIS MAJESTY'S SERVICE. (A.A.Sec.12(1)(A).

The Commanding Officer directs that the Evidence be taken upon Oath.

The accused, unable to speak English, has been represented by an interpreter. The interpreter, G.45501 RSM.(WO.I) H.J.FOURNIER., Carleton & York Regt., RSM. of 13 CBR Bn., 2 CBR.Gp., has taken an oath in accordance with Rules of Procedure, Appendix II(3), to interpret and translate to the best of his ability.

First Witness.

K.42845 Sgt.Jackson, R.L.G., A/CSM. 46 Fwd.Rft.Coy., 13 CBR Bn., 2 CBR Gp., having been duly sworn, states:-

At 10:00 hrs 29 Oct. 44.
On mustering the draft for the Regt de Chaud, on which the accused whom I now recognize was on it, I informed the personnel concerned "you are on draft to your Regiment, Transport will call for you sometime

to-day. It may not arrive before dinner. You are to stay in this area until the trucks arrive."

I had no reason to believe that anyone could not hear or understand my orders, as everyone was in full marching order, ready to proceed on Dept. Prod.

There was no written warning

The Louis Sq Dept arrived at 15-30 hours on the 29 Jul. 44, and the personnel of the Regt. de Chaud were again mustered and the Roll was called. The accused did not answer his name, and was absent when the Dept pulled away, approximately 15-50 Hrs. 29 Jul. 44. The absence of the accused was reported to Coy orderly Room, and I did not see the accused again until 1545 hrs. 8 Aug. 44.

R.B. Jackson

The accused does not wish to cross-examine the witness.

The accused was cautioned as follows:-

Do you wish to make any statement or to give evidence on oath? You are not obliged to say anything or give evidence unless you wish to do so, but whatever you say or any evidence you give will be taken down in writing and may be given in evidence

The accused does not desire to make any statement or give evidence on oath at this time.

The accused does not call any witnesses for the defence.

I certify that the foregoing Summary of Evidence consisting of one page was taken down by me in the presence and hearing of the accused and that Rules of Procedure 4(c) (d) (e) and (f) have been complied with.

J. Fransiszyn

(J. Fransiszyn) Capt. RCASC.
Officer detailed to take Summary.

Field
11 Aug 44.

H.Q.C. 55-F-881 CONFIDENTIAL

DEPARTMENT OF NATIONAL DEFENCE—OTTAWA, CANADA

SUBJECT

FIELD GENERAL COURT-MARTIAL

FAIRWEATHER, GEORGE TAIT L-[illegible]

CENTRAL REGISTRY	DATE	P.A. OR S.F.	INITIALS	REFERRED TO	FOR	INITIALS	DATE
				(If purpose for which referred cannot be expressed on one line, enter here "With Minute")			2-12-46

CONFIDENTIAL
H.Q.C. 55-F-881

OVERSEAS COMBINED

NOTICE

1. Files should be retained no longer than absolutely necessary. If a file is frequently needed at short intervals, it is better to R.F. it for two or three days than keep it out of Central Registry indefinitely. This ensures it being completed and kept in order, and also gives other officers an opportunity to peruse it.
2. Central Registry should be notified whenever a file is passed direct to another branch.
3. All enquiries having reference must bear the official file number.

PASS THIS FILE IN ENVELOPE

SCHEDULE.

PART I. PLEA(S), FINDING(S) AND SENTENCE.

Accused: L1421 Pte George Jait FAIRWEATHER, RCASC on strength CMHQ

Charge. (Insert "alternative" where applicable.)	Plea. (See Instrs p 2.)	Finding. (See note below.)	(Space for use as required for further charges, accused charged jointly, special findings, etc.)
1st 41 AA.	guilty	guilty	
2nd (alt) 40 AA.	Withdrawn by Prosecutor		
3rd			
4th			
5th			
6th			

(Note: As to findings for lesser offences see AA 56, RP 44; findings on alternative charges see MML p 483 fn 4 para 2, RP 44; special findings see RP 44 and MML p 753, and in lieu of kit see RP 44 fn 6.)

WMWS ~~Present under sentence for~~ ..... ~~beginning on (date)~~ ..... (1)

(1. Insert sentence being served, or delete, if not applicable. See RP 46(A). Information should be found on MF B355 or AF B296.)

Time in confinement awaiting present trial—a total of 62 days, of which 38 days were spent in hospital.(1)

(1. See RP 46(A) fn 2. Information should be found on MF B355 or AF B296 admitted in evidence under E2.)

Sentence Awarded by the Court: To be imprisoned without hard labour for one year.

(Sgd) WMW Shaw Capt. Judge-Advocate, if any. 14 June 45 Date awarded. (Sgd) E S Williams Major President. (RP 45, 50.)

(See back of Convening Order as to assembly and disposal of record after trial.)

PART II. MINUTE WHERE CONFIRMATION RESERVED. (AA 54(5), RP 120(E), MML p 760.)

Date ..... (Sgd) EW Commanding .....

PART III. DECISION OF CONFIRMING OFFR ON FINDING(S) AND SENTENCE.

(For duties and powers see AA 54, 57, RP 37(D) fn 6, 46(A), 51-56, 120, MML pp 759-761, KR Can 567-577. Acquittals require no confirmation and cannot be revised: AA 54(3). Sending back finding or sentence for revision by Court: AA 54(2), RP 120(G). If not confirmed, accused may be tried again: AA 157, MML p 64. Minute of confirmation or non-confirmation may be altered before promulgation: RP 53, MML p 65. Quashing after promulgation: KR Can 573. Duties and powers of reviewing offrs: AA 57, 57A, RP 53A, 54. The Confirming Offr must sign here personally, AA 172 fn 1.)

My decision on the finding(s) and sentence set forth in Part I is: I confirm the finding and sentence

~~I direct that the accused be not committed to prison or detention barracks until further ordered.~~ (1)

(1. ~~AA 57A~~. Delete if not used.)

Date ..... (Sgd) Chas Fullerton (E.C. WEEKS) Major-General i/c Administration Commanding ..... Confirming Officer.

20 JUN 1945

PART IV. PROMULGATED AND EXTRACTS TAKEN. (RP 53, KR Can 576, 577.)

Accused.	Date.	Signature of Offr.
L-1421 PTE. FAIRWEATHER G.T.	21 JUN. 46.	R. J. Williams

(R. J. WILLIAMS Lt-Col. CAMP COMMANDANT, Military Headquarters.)

ALL DELETIONS AND ALTERATIONS WILL BE INITIALLED

RECEIVED 14 JUN 1945 CMHQ

5M-94.

(In lieu of AFA31) 407/P & S/1098 (40-0)

4/38B

FIELD GENERAL COURT-MARTIAL

Convened by Lt-Col R J Williams A/Comd CMHQ dated 12 June 45

ACCUSED.

(As to the trial of two or more charged jointly see RP 16, 71, 109. As to reasons for showing (a) permanent or confirmed rank, and (b) apptmt, A/rank or A/apptmt, if any, see AA 182, 183, fns, KR Can 308, 328, 330.)

Number.	(a) Prmnt R. (b) Apptmt, A/R or A/Appmt.	Full Christian Names.	Surname.	Unit.
L1421	Pte	George Jait	FAIRWEATHER	RCASC on strength CMHQ

PROCEEDINGS REVIEWED 28 June 45 WMW Shaw Capt

REVIEWING OFFICER, JAG BRANCH, C.M.H.Q.

PROCEEDINGS OF TRIAL.

Held in the Fd in (country) England on (date(s)) 14 June 45

RECORD FORM A—OPENING PROCEEDINGS AND ARRAIGNMENT.

WMWS

A1. The President, Members, waiting Member, JA, ~~Offr~~, and Offrs under instr, if any, assemble, and the Court is closed.

(PRINTED MATTER, NOT IN ITALICS FOR GUIDANCE, WILL BE DELETED, IF NOT USED OR APPLICABLE, AND INITIALLED BY PRES OR JA. The Schedule referred to throughout is on p 4. Citations do NOT include all relevant fmn ROs. For guidance on procedure when a variation in this form arises, see form for GCM in MML pp 741 to 759. A brief record of such variation will be made and given a number having reference to appropriate or preceding para number herein. See back of Convening Order, CF A95, for oaths and instrs on how to record addresses, evidence, etc, which instrs are hereafter called "Notes". As to general provisions for conducting the trial see AA 53, RP 56, 63-70, 73, 74, 94, 103, 119, 132.)

A2. The President initials and lays before the Court the Convening Order and Charge Sheet(s) attached thereto.(1) The Court is satisfied that it is properly convened and constituted(2), accused is (are) amenable to military law, and each charge discloses an offence.(3)

(1. As to use of Summary of Evidence see RP 17 fn 6. 2. AA 49, 50, RP 105-107. 3. RP 11-13, 23, 24.)

WMWS A3. The Court is opened. The accused is (are) brought before the Court. At 0920 hours trial commences.

WMWS A4. The Prosecutor produces a Medical Certificate that accused is (are) fit to undergo trial by court-martial.(1) ~~The Prosecutor informs the Court that accused elected to be tried by court-martial instead of being dealt with summarily by the CO.(2)~~

(1. KR Can 557. 2. AA 46(B), RP 60 fn 1. For effect see KR Can 563(c). Delete, if not applicable.)

A5. President to accused: Do you object to ~~the interpreter~~ / ~~the shorthand writer~~ being sworn?

~~The interpreter is sworn (1). Do you object to the shorthand writer being sworn?~~ (1) ~~the shorthand writer~~ Ans

(1. RP 72. Delete, if none employed.)

A6. The Convening Order and names of the President and Members of the Court are read to the accused.(1) President to accused: Do you object to be tried by me as President or by any of the Members of the Court?

Ans No, Sir (2)

(1. RP 110. 2. If no objection, waiting member retires. RP 68(B). If objection, see procedure AA 51, RP 25, 71, 18, MML p 742.)

WMWS A7. The President, Members, JA, ~~Offr~~, and Offrs under instr, ~~if any~~, are sworn.(1) The following are the ranks, names and units of the offrs comprising the Court, etc:

President	Major	E.S. Williams	RCASC. DADT, CMHQ
Member	Capt	R.F. Stone	RCAMC, CPM. CMHQ
Member	Capt	J.R.T. Payton	Gen List, SP Branch CMHQ
Judge-Advocate	Capt	W.M.W. Shaw	Office of JAG. CMHQ.
Prosecutor	Capt	V.R. Pearce	CMHQ
Defending Offr	Lieut	G.G. Gomery	1 Can Pnl at CMHQ.

Questions by President: Is the Prosecutor a lawyer? Ans No. Is the Defending Offr a lawyer? Ans No. (2)

(1. RP 26, 27, 109, 111. List of offrs under instr will be returned separately with proceedings for information of Conv Offr.)
(2. If Pros a lawyer and Def Offr not, accused is entitled to an adjournment when RP 89 (B) and fn 2 were not followed. See D1 p 3.)

WMWS A8. The accused before arraignment make(s) (no) plea.(1)

(1. If a special plea is made for separate trial on one or more charges (RP 62(E), 108), or as to the jurisdiction of the Court (RP 34, 35(A), 113), or in bar of trial (RP 36), or as to accused's mental fitness to stand trial (AA 130, RP 57), or by one of several accused charged jointly to be tried separately (RP 16, 71), such plea, the addresses made in support or against, the evidence, if any, and finding are recorded per Notes. For forms of record see references in fns to RsP cited. Insert in A8 rank and name of the accused making the plea.)

WMWS A9. The accused is (are) arraigned (separately) on all charges in the charge sheet.(1) The accused does (do) not object to any charge.(2) There is no amendment to be made to the Charge Sheet.(2) The President records the pleas in Part I of the Schedule.

(1. RP 31, 112. See para 1 of Instrs p 2. When more than one Charge Sheet see RP 62; when several accused to be tried separately see RP 71(C), and use separate copies of CF A96 to record proceedings. 2. RP 32, RP 33. If otherwise, delete and make appropriate record per Notes.)

WMWS A10. The Court (~~is cleared~~) considers the Instrs on Procedure after Arraignment at top of p 2. The proceedings are continued on Record Form B

PRESIDENT OR JA WILL INITIAL ALL DELETIONS AND ALTERATIONS.

INSTRUCTIONS ON PROCEDURE AFTER ARRAIGNMENT.

1. *The accused may not plead or be found Guilty on more than one of two or more charges laid in the alternative.* (*RP* 37(*A*).) *As to withdrawal of alternative charges by Prosecutor see RP* 35(*C*). *No other charge can be withdrawn for any reason without authy from Convening Offr. If Convening Offr concurs, Court may accept plea of Guilty to lesser, etc, offence.* (*RP* 44(*H*).) *Accused may change a plea of Not Guilty to Guilty during trial.* (*RP* 38.) *As to refusing to plead or not pleading intelligibly see RP* 35(*A*). *As to plea when sentence may be death see RP* 35(*D*).

2. *The proceedings on each charge sheet* (*RP* 62) *after arraignment will be conducted as follows in the respective circumstances stated :*

I. If pleas to all charges are GUILTY, use Record Form B below.

II. If pleas to all charges are NOT GUILTY, use Record Form D on p 3.

III. If pleas to some charges are GUILTY and to other charges are NOT GUILTY and,

(a) *Such mixed pleas occur when there are no alternative charges in the Charge Sheet, use Record Form C below.* (*RP* 37(*A*).)

(b) *Such mixed pleas occur in a set of two or more charges laid in the alternative, see RP* 37 (*A*) *and fn* 2 *as to discretion of Covrt,* (i) *to try the accused on all such alternative charges as if he had pleaded Not Guilty thereto, or,* (ii) *to record the pleas as the findings of Court. After deciding between* (i) *and* (ii), *Court will proceed under foregoing instrs as may be appropriate to result of its decision. See MML p* 744 *Instrs* (2).

3. *As to responsibility of President to accused see RP* 59, 60(*C*) ; *powers and duties of JA see RP* 103 ; *duty of Prosecutor see RP* 60(*A*) (*B*) ; *duty and privileges of accused and Defending Offr see RP* 60(*C*), 87(*C*), 91, 92 ; *swearing and withdrawal of witnesses from Court see RP* 81, 82 ; *questioning of accused see RP* 80, 87(*C*), 92(*B*), *and of witnesses see RP* 83-85 ; *calling or re-calling of witnesses by Court, etc, see RP* 75-79, 86, 116 ; *use of Summary of Evidence at Trial see RP* 17(*E*) *fn* 6 ; *and responsibility of JA or Pres to record proceedings see RP* 94, 96.

RECORD FORM B—PROCEEDINGS ON PLEAS OF GUILTY TO ALL CHARGES.

B1. The ~~President or~~ JA, ~~I know~~, complies with RP 35(B) by explaining to the accused the nature and meaning of the charge(s)(1), and that on his plea of Guilty there will be no regular trial but merely a consideration of the sentence to be awarded after he has been given an opportunity to make a statement in reference to the charge(s), call witnesses as to character and make an address in mitigation of punishment.(2)
(*1. RP 35 fn 3. 2. MML p 54 para 47.*)

B2. President to accused : The Court will now receive any statement you desire to make in reference to the charge(s).(1) If it appears from your statement that there are circumstances which indicate that you do not understand the effect of the plea of Guilty(2), or which show provocation or extenuation in respect of which in your interest the witnesses for the Prosecution should be examinod(3), we shall advise you to change your plea to Not Guilty. In making a statement you will not be sworn or subject to cross-examination ; and anything you say will not be used in evidence against you after you change your plea. If, however, it appears to the Court that your statement affects only the amount of punishment to which you are liable, you will not be advised to change your plea and you will be given an opportunity later to prove your statement by sworn testimony, if you so desire.(4)

President to accused : Do you wish to make a statement ? Ans. No, Sir. (5)
(*1. RP 37(B). 2. RP 37(D) fn 6. 3. RP 35(B) fn 5 para 3, MML p 54 para 47. 4. See para E3 of Record Form E. 5. Statement, if any, recorded per Notes.*)

~~B3. The Court considers the accused's statement.(1) The Court decides (not) to advise accused to change his plea(s) of Guilty to Not Guilty on charge(s). The accused is (are) so informed, and he (they) change(s) his (their) plea(s) on charge(s). Part I of the Schedule is amended accordingly.~~
(*1. Court may be closed to consider the statement. Delete whole or part not used.*)

B4. On the charge(s) to which the plea(s) of Guilty is (~~are~~) not changed the President records finding(s) of Guilty in Part I of the Schedule.(1)
(*1. RP 35(B). If any plea(s) is (are) changed, use Record Form C or D as appropriate.*)

B5. The Summary of Evidence is marked Ex. B5, initialled and read aloud by the President.(1)
(*1. If there is no Summary, or if it is inadequate, comply with RP 37(B). If there is any evidence inconsistent with any plea standing as Guilty, Court will advise accused to change such plea and, if changed to Not Guilty, try such charge(s) by use of paras D1 to D8 inclusive of Record Form D on p 3. RP 37(D).*)

B6. The accused having been found Guilty on one or more of the charges, the proceedings are concluded by using Record Form E on p 3.

RECORD FORM C—PROCEEDINGS ON MIXED PLEAS OF GUILTY AND NOT GUILTY.

C1. As to the charges on which accused pleaded NOT GUILTY the trial is continued by using paras D1 to D8 inclusive of Record Form D on p 3 before proceeding with C 2.(1)
(*1. RP 37(A) (E).*)

C2. The charges on which accused pleaded GUILTY are read to him (them) again, and the trial is continued by using paras B1 to B5 of Record Form B above.(1)
(*1. Under B5 such parts only of the Summary of Evidence are read as relate to the charges dealt with under C2. If any plea is changed to Not Guilty, trial thereon proceeds by complying with paras D1 to D8 inclusive in Record Form D on p 3 and making an appropriate record thereof on a separate sheet.*)

C3. The accused having been found Guilty on one or more of the charges, the proceedings are concluded by using Record Form E on p 3.

PRESIDENT OR JA WILL INITIAL ALL DELETIONS AND ALTERATIONS.

RECORD FORM D—PROCEEDINGS ON PLEAS OF NOT GUILTY TO ALL CHARGES.

D1. President to accused : Do you wish to apply for an adjournment on the ground that any of the rules relating to procedure before trial have not been complied with, and the trial may have been prejudiced thereby, or on the ground that you have not had sufficient opportunity to prepare your defence ? Ans.....(1)
(*1. If "yes", see RP 39(A) for procedure. Statement or evidence, if any, is recorded per Notes.*)

D2. The Prosecutor makes (an) (no) opening address.(1)
(*1. RP 39(B), 60(A) (B), 90, 92(C) (D). Record address per Notes, subject to RP 95(C).*)

D3. The evidence for the Prosecution is taken.(1)
(*1. RP 39(C), 114, KR Can 555. Record evidence per Notes. As to Prosecutor giving evidence himself see RP 39(D) (E).*)

D4. The Prosecution is closed.(1) The Defending Offr submits that the evidence for the Prosecution does not establish a prima facie case against the accused on the.....charge(s).(2) The Court is closed, and considers the submission.(3) The Court is re-opened, and the President announces that the submission is disallowed on the.....charge(s), and allowed on the.....charge(s), and that, accordingly, the trial will proceed on the former, but the accused is (are) found Not Guilty on the latter charge(s).(4)
(*1. Delete remainder of this para, if submission not made. 2. Arguments on submission, answer and reply are recorded per Notes. 3. RP 40 fn 1. See MML p 92 paras 12-14 and p 81 para 42. 4. Delete part not used. If accused acquitted on all charges, use second alternative in para D8.*)
NB : If trial proceeds, accused must be allowed great latitude in making his defence, and the Court should not stop his defence solely on ground of irrelevance. (*RP* 60(*C*), *114, 115*.)

D5. President to accused : You will now proceed with your defence.(1) You may, if you wish, give evidence yourself on oath as to the facts or your character or both, in which case you will be subject to cross-examination.(2) You may, however, make a statement without being sworn, and you will not be subject to cross-examination.(3) But a statement which could have been made on oath will not carry with the Court the same weight as sworn testimony.(4) You may call witnesses in your defence and as to character, whether you give evidence or make a statement or do neither.

President to accused : Do you wish to give evidence yourself as a witness, make a statement, or do neither ?
Ans..... Do you intend to call witnesses on your behalf ?
Ans..... Are they witnesses as to character only ? Ans.....
(*1. RP 115. 2. RP 40(A), see 80(D). 3. RP 40 fn 10. 4. RP 40 fns 2, 9.*)

D6. Consequent on the answers recorded in para D5 the appropriate procedure for the defence is followed.(1)
(*1. RP 114, 115, 116. For procedure see Notes on back of Convening Order, CF A95. Evidence for accused as to his character should, if in his interest, be given before the finding. See RP 46(A) fn 1, 86(C). Note the further opportunity in para E1 of Record Form E. Record per Notes addresses, statement, evidence and any summing up by the JA under RP 42, 103(e).*)

D7. The Court is closed to consider the finding(s).(1) The finding(s) of the Court is (are) recorded in Part I of the Schedule.(2) The Court is re-opened.
(*1. RP 43, 117(A). See Notes in Part I of Schedule. 2. RP 44(A).*)

D8. The President announces the finding(s), if any, of Not Guilty, and states to the accused that the finding(s) of the Court on the.....charge(s), being subject to confirmation, will be promulgated later.(1)
Or, The President announces that the accused is found Not Guilty on all charges and is to be released forthwith, and that the proceedings are accordingly terminated. Part I of the Schedule is dated and signed.(2)
(*1. AA 54(3) (6), RP 45, 120(A). 2. AA 54(3), RP 45, 117. This alternative announcement is not applicable when there are pleas of Guilty outstanding and dealt with under Record Form B or C.*)

D9. The accused having been found Guilty on one or more of the charges, the proceedings are concluded by using Record Form E below.

RECORD FORM E—PROCEEDINGS ON CONVICTION BEFORE SENTENCE.

E1. President to accused : Do you wish to give evidence yourself or to call any witnesses as to your character ?(1)
Ans. No, Sir.
(*1. If evidence has already been given by accused or his witnesses as to his character, delete this para. RP 37(C) fn 4, 46 fn 1. Accused and witnesses are sworn. Evidence recorded per Notes.*)

E2. The Prosecutor produces Statement(s) as to Character and Particulars of Service(1), and certified true copy (copies) of Conduct Sheet(s)(2), purporting to refer to the accused, which he submits to the Defending Offr for examination, and then to the Court for admission in evidence. The Court is satisfied that these documents refer to the accused, because (i) they purport to be signed in the manner required by AA 163(l) (g) (h), and (ii) they purport to refer to (a) soldier(s) having the same number, rank, name and corps as the accused. Admitted in evidence and marked Ex. B6 and Ex. B7 respectively.(3)
(*1. MFB 355 or AFB 295. 2. MFM 6. 3. RP 46, KR Can 558. If above documents not produced, see RP 46 fn 1 para 1.*)

E3. President to accused : Do you wish to address the Court on the Statement(s) and Conduct Sheet(s), and in mitigation of punishment ?(1) Ans. Yes I do. (see attd) (2)
(*1. RP 37(C), 46(D). 2. Address, if any, recorded per Notes. Court should permit accused or his witnesses to prove on oath anything here or previously stated which would affect the amount of punishment. RP 37(F) fn 7.*)

E4. The President states that the Court is closed to consider the sentence, and that the sentence to be awarded by the Court, being subject to confirmation, will not be announced, but will be promulgated later, and the proceedings in open court are accordingly terminated.(1)
(*1. AA 54(6), RP 120(A).*)

E5. The Court considers the sentence.(1) The President records the sentence in Part I of the Schedule, which is dated and signed by him and the JA, if any.(2)
(*1. When several accused tried separately see RP 71 (D). One sentence only, comprised of the punishment or punishments laid down in AA 41, 44 and its proviso, is to be awarded to cover all charges in all charge sheets on which accused found guilty. RP 48. As to sentences see AA 44, 138, 182, RP 46-50, 69, 118, 119(A), KR Can 308, 330, 563-566, Overseas RO 309, 2323, MML p 60, 757-759. As to sentences assigned for civil offences by the law of England see AA 41(5), MML p 130. When accused already under sentence of imprisonment or detention see AA 44(18), 68(1), KR Can 564. 2. RP 50. As to release from arrest by Confirming Offr see KR Can 567. As to assembly and disposal of record after trial see instrs on back of Convening Order.*)

PRESIDENT OR JA WILL INITIAL ALL DELETIONS AND ALTERATIONS.

CHARGE SHEET

The accused, L-1421 Pte George Tait FAIRWEATHER, Royal Canadian Army Service Corps, on strength Canadian Military Headquarters, a soldier of the Canadian Army Overseas, is charged with:

FIRST CHARGE
AA
Sec ~~64~~ 41.RP.O

WHEN ON ACTIVE SERVICE COMMITTING A CIVIL OFFENCE, THAT IS TO SAY STEALING, CONTRARY TO SECTION 2 OF THE LARCENY ACT 1916

in that he

in the Field between the dates of 13 Apr 44 and 13 Apr 45 stole the articles listed hereunder:-

1. One writing pad and envelopes.
2. One tube of "Lifebuoy" shaving cream.
3. One tube of "Spearmint" tooth paste.
4. One tube of "Familex" shaving cream.
5. One tube of "Palmolive" shaving cream.
6. One tube of "Listerine" tooth paste.
7. One tube of "Ipana" tooth paste.
8. One box of "Palmolive"after-shave lotion.
9. One stick of "Colgates" shaving soap.
10. One box of "Woodbury's" after-shave powder.
11. One box of "Woodbury's" tooth powder.
12. Two sticks of "Colgates" shaving soap.
13. One box of "Jacquello" talcum powder.
14. Three bars of "Ivory" soap.
15. One box of "Smiles'n Chuckles" chocolates.
16. One box of buttered nuts.
17. One box of "Crisco".
18. One box of "Patax" chips.
19. Two cartons of "Wrigley's" chewing gum, (24 packages).
20. One ½lb tin of Buckingham Fine Cut Tobacco.
21. One bag of prunes.
22. One box of "Red Rose" tea bags.
23. One tin of "Cowbell" milk powder.
24. One tin of sliced beets.
25. One box of "McCormicks Soda Biscuits".
26. One leather sewing kit wallet.
27. Two corncob pipes.
28. One box of "Multiple Vitamins".
29. One box of "Ray-Dent" tooth powder.
30. One package of dehydrated apples.
31. One tube of "Lifebuoy" shaving cream.
32. Two packages of "Noodle Soup" mix.
33. One jar of "Ingram's"shaving cream.
34. One package of sultana (1 lb) raisins.
35. One package of sultana (1 lb) raisins.
36. One package of "Canabec" cheese.
37. One tin of "Prem".
38. One tin of "Burns" canned fowl.
39. One can of orange juice.
40. One can of peaches.
41. One can of waxed beans.
42. One can of Boneless Chicken.
43. One can of "Borden's" condensed milk.
44. Two tins of sardines.
45. One tin of apple juice.
46. One tin of apricots.

WITNESS

47. One tin of salmon.
48. One tin of chicken stew.
49. One tin of "Sockeye" salmon.
50. Two rolls of "Cine-Kodak" film.
51. One can of "Pacific" evaporated milk.
52. One package of jelly powder.
53. One package of "Sunway" fruit crystals.
54. One tin of "Carnation" evaporated milk.
55. One box of "Colgates" tooth powder.
56. One bottle of "Acetyl-Salicylic" acid tablets.
57. Two cakes of "Sunlight" soap.
58. One cake of "Lifebuoy" soap.
59. One cake of "Cashmere Bouquet" soap.
60. Two cakes of "Woodbury" facial soap.
61. One cake of "Maple Leaf" toilet soap.
62. Two cakes of "Lux" toilet soap.
63. Four cakes of "Palmolive" soap.
64. One box of "Woodbury's" tooth powder.
65. One package of "Jello" powder.
66. One bottle of shampoo, "Familex".
67. One bottle of "Salotyn" tablets.
68. One tin of "Postum".
69. Three cakes of "Coc-Pumice" soap.
70. One "Patrician" tooth brush.
71. One box of Cold Tablets.
72. One stick of "Woodbury's" shaving soap.
73. Four pairs of shoe laces.
74. One box of "Junket" tablets.
75. Five packets of cigarette papers.
76. Three packages of "Chiclets".
77. One package of "Vicks" cough drops.
78. One package of toffee.
79. One package of hair shampoo.
80. One package of "Dentyne" chewing gum.
81. Thirteen chocolate bars.
82. One wooden brooch.
83. Three empty cardboard cartons.

the property of a person or persons unknown.

SECOND CHARGE
(Alternative)
AA
Sec 40

WHEN ON ACTIVE SERVICE CONDUCT TO THE PREJUDICE OF GOOD ORDER AND MILITARY DISCIPLINE

in that he

in the Field on 14 Apr 45 was in improper possession of the articles listed in the particulars of the first charge, the said articles being the property of a person or persons unknown.

Approved on behalf of JAG Overseas pursuant to KR (Can) 540 and Appendix to Overseas RO 4756(13)

(WP Taylor) Major
A/AJAG
11 June 45

In the Field
11 June 1945

R. J. Williams
(R J Williams) Lt-Col
Camp Commandant
CANADIAN MILITARY HEADQUARTERS

TO BE TRIED BY FIELD GENERAL COURT MARTIAL

R. J. Williams
(R J Williams) Lt-Col
Camp Commandant
CANADIAN MILITARY HEADQUARTERS

In the Field
12 June 1945

Exhibit

FIELD GENERAL COURT-MARTIAL

(Whether the accused to be tried is under his comd or not, a FGCM may on application to him be convened by any offr of Cdn Army Overseas, or of any other force if authorized in law, in immediate comd of troops on active service, subject to RP 105(C) and restrictions imposed by appropriate authy. AA 49, 50, RP 104-107, 114. As to the duties and privileges of the Convening Offr in dealing with the application see MML Chap V paras 20 and 23, RP 87(B).

There should be a separate Convening Order for each person to be tried separately by the same Court. RP 71(C), 109. As to separate charge sheets see RP 62, and as to separate trial on charges in the same charge sheet see RP 108. As to two or more accused charged jointly see RP 16, 109. As to reasons for showing (a) permanent or confirmed rank, and (b) appmt, A/rank or A/appmt, if any, see AA 182, 183, fns, KR Can 308, 328, 330.)

ACCUSED.

Number.	(a) Prmnt R.	(b) Appmt, A/R or A/Appmt.	Full Christian Names.	Surname.	Unit.
L 1421	Pte		George Tait	FAIRWEATHER	RCASC on strength CMHQ

CONVENING ORDER.

1. Whereas complaint has been made to me, the undersigned, that the person(s) named above as the accused, being subject to military law, has (~~have~~) committed the offence(s) set forth in the Charge Sheet(s) attached and on (*date*) 12 Jun 45. endorsed by me, (~~order an offr of my staff to act~~) " To be tried by Field General Court-Martial ". RJW

2. And whereas I am of opinion that it is not practicable that such offence(s) should be tried by an ordinary General Court-Martial ; (~~and that it is not practicable to delay the trial for reference to a superior qualified offr~~) RJW

(Delete part in brackets when not required for compliance with RP 105(C).)

3. I hereby convene a Field General Court-Martial to try the said person(s), and to consist of the Offrs appointed or detailed hereunder.

4. ~~The members to appoint to the offrs to form the court(s) and the offr as President for the reasons stated in the attached charge.~~ RJW

(AA 49, RP 106(B), 107(A). Delete the whole or part, if not applicable.)

5. I also appoint as Judge-Advocate thereat the Offr mentioned hereunder.
(RP 106(E). Delete, if none appointed.)

PRESIDENT.

Major *(Rank.)*	R.S. WILLIAMS *(Must be named. RP 106.)*	RCASC	DADT, CMHQ. *(Unit.)*

MEMBERS.

Capt	R.F. STERNS	RCAPC	CPM, CMHQ
Capt *(Rank.)*	J.R.T. PAYTON *(Named or detailed. RP 106.)*	Gen List	SP Branch CMHQ *(Unit.)*

WAITING MEMBER.

Capt *(Rank.)*	R.L. MacDONALD *(Named or detailed, if any. RP 106.)*	RCEME	Q(AE) Sub-Br, CMHQ *(Unit.)*

JUDGE-ADVOCATE.

Capt *(Rank.)*	W.M.W. SHAW *(Must be named, if any. RP 106.)*	Office of JAG, CMHQ *(Unit.)*

On Active Service in the Fd

in England *(Country.)*

R. Williams *(Signed personally. RP 105 fn 2.)* Lt-Col *(Rank.)*

(R.J. Williams)

Dat. 12 June 1945

Commanding Camp Commandant Canadian Military Headquarters Convening Officer.

CONVENING OFFR WILL INITIAL ALL DELETIONS AND ALTERATIONS

(See overleaf for oaths and notes for use on trial.)

WMWS Approved A Deputy Judge Advocate Capt 4-6-45

MEDICAL CERTIFICATE

I hereby certify that I have this morning examined

L 14.21.Pte.FAIRWEATHER.G.T....C.I.C...C.M.H.Q.

and in my opinion he is fit to undergo trial by Field General Court-Martial.

London.
1 4 Jun 45

.....RCAMC
Signature of Medical Officer.

Essex Lonnes

Offr under instruction:- Capt R.L. McDonald, RCEME, 8 (AE) Branch, CMHQ.

NOTE:
Exhibits attd to the summary were returned to Capt Pearce, the Prosecutor, for safekeeping pending direction from the confirming authority.

W.M.W. Shaw
Capt.

Plea in Mitigation

The accused has pleaded Guilty to the charge but before the Court passes sentence there are several facts which might well be taken into consideration in awarding punishment.

In the first place he made a voluntary confession before the charge was laid. He did this in order that another person might not become involved which in itself shows a certain nobility of character. Moreover by making a clean breast of the matter he has shown that he is man enough to make amends for his misdemeanour and take his punishment.

Pte Farmer's loyalty to his Country has been amply proved in two wars. At the age of 16 he joined the RCMR and served as a seaman from 1916 to 1919. In 1917 the ship on which he was serving was torpedoed and he suffered severely from exposure before being rescued. Early in Sept 1939 he reported to the Naval Barracks in Charlottetown but was told that due to his age, (34) he would not be accepted for service at that time. In Sep 1939 he enlisted in the Irish R.I. (Inf) and proceeded overseas in Dec of that year. He saw service in the expedition to Spitzbergen in 1941. He underwent the Air Raids in this country in 1940-41 and was stationed in London during the Air Raids of 1941 and the V-1 & V-2 attacks of the past year. During this time he has done unofficial voluntary rescue work on several occasions.

Although classified medically as Category 'A' on enlistment and still retaining that grade, Pte Farmer's health since coming overseas has not been good for some time past he has suffered from Arthritis, which in view of the foregoing, must be attributed to War Service. On 28 Apr 44 he was admitted to Hospital and was treated for this complaint & Pleurisy showing [illegible] his hands and chest are considerably affected. Also at the beginning of this year he attended sick parade for an infection in the groin which was duly dressed. He is in spite of chronic poor health he has not applied to be medically boarded out nor has he ever made applications for return to Canada.

CONCLUDED

Pte Fairweather's domestic affairs are a constant source of worry. He married in 1945 and has 4 children. However in 1951 his wife underwent an operation which appears to have changed her nature completely and she became very unreliable. Pte Fairweather did everything in his power to keep the home together but after repeated instances of his wife's infidelity they separated in 1953. Before joining the Army he contributed to the support of his family and since then his wife has been receiving Dependents Allowance and assigned pay. He has made several attempts to communicate with his wife both directly and through Legal Aid Branch and various padres and padre[illegible] None of these attempts has been successful. Pte Fairweather is on the best of terms with his children (the youngest of whom is not his) and plans to make a home for them when he returns to Canada. Two of the children are serving in the forces. (Navy)

Since being overseas Pte Fairweather has left with his parents.

During his tour of duty as driver of the vehicle picking up mail at the Can Overseas Postal Depot and delivering it to 1 Can Inf Bde. Pte Fairweather was solely responsible for the safe custody. [illegible] he frequently had to make duty calls at [illegible] and was obliged to leave [illegible] unattended. Not only was this a great responsibility but a constant temptation.

In conclusion, Pte Fairweather has been under close arrest since 13 Apr 54 during which time he has been subject continuously to the rules and discipline of detention.

WMWS

Summary of Evidence in the case of L.1421 Private George Tait FAIRWEATHER, R.C.A.S.C. on strength Canadian Military Headquarters (MT Section), a soldier of the Canadian Army Overseas.

The Commanding Officer directs that the Evidence be taken under Oath.

Captain V. G. PEARCE the Officer detailed to take the Summary explained to the accused the purpose of this Summary of Evidence.

W6451 Pte. Patterson, E. F. C.W.A.C. duly sworn as Stenographer.

~~First Witness for the Prosecution:~~

X R140145 LAC MUNN, J., R.C.A.F., having been duly sworn states:

I am R140145 LAC Munn, J., R.C.A.F., employed as Postal Clerk at F.P.O. 650, at No. 1 C.C.P.D.

I recognize Pte. Fairweather, the Accused, as a Mail Orderly to whom I have on many occasions handed mail at F.P.O. 650 for delivered and for any Registered Mail handed to him I have taken his signature.

I identify the book "Registered Articles Advice List P1166B" as the one used by myself and other despatching clerks at F.P.O. 650. (Attached and marked Exhibit "A"). In this book is contained an Advice List bearing the stamp "FPO 650" and dated 31 October 1944, and shows two registered packages:

1. Montreal Registered Number 8231
2. Ottawa, Registered Number 1482

That there were only two Registered Packages is evidenced by the figure "2" encircled, also the word "two" opposite the word "Total" at the bottom of the slip.

This Advice List is signed by me "J. Munn" as despatching Officer and I identify my signature thereon. These registered packages were handed to G. T. Fairweather, whose signature appears thereon as a receipt for these packages. The Registered Packages were for delivery to P. and S. C.M.H.Q. (Attached hereto and marked Exhibit "B".)

In all cases when registered packages are handed by myself or other despatching clerks at F.P.O. 650 a receipt is obtained from the person to whom

Selected. V.G. Pearce Capt.

B's

~~First Witness for the Prosecution:~~

~~R140145 LAC Munn, J., continues:~~

such packages are handed. Under no circumstances would a registered package be handed out without obtaining a receipt.

Deleted Pl. Pearce Capt.

The Accused declined to cross-examine the witness.

J Munn

(R140145 LAC Munn, J.)

~~Second Witness for the Prosecution:~~

W12921 Cpl. SMITH, L. B., C.W.A.C., having been duly sworn states:

I am W12921 Cpl. Smith, L. B., C.W.A.C., employed at P and S Detachment, C.M.H.Q., as N.C.O. in charge of Central Registry, where I have been employed since 18 May 1944 and where all Registered and Ordinary Mail is received for this Department.

When the Mail Orderly comes in with the Mail it is brought to my desk where the Registered Mail is sorted from the Ordinary Mail. Sometimes Registered Mail comes in the Mail Bag with the Ordinary Mail, in which case I would separate it. Registered packages are accompanied by an Advice List, similar to those in the Book "P1166B" which is marked Exhibit "A".

Deleted. Pl. Pearce Capt.

I have examined Registered Advice List dated 31 October 1944, which is marked Exhibit"B", which covers two registered packages:

1. Montreal, registered number 8231
2. Ottawa, registered number 1482

which shows that they were despatched from F.P.O. 650 by J. Munn, despatching officer, for delivery to P. and S. Detachment, C.M.H.Q., by C. T. Fairweather, whose signature appears thereon. These two registered packages were never received by me, and I have no knowledge of them whatsoever. I say this because had I received them they would have been entered in a Registered Letters Book kept by me for that purpose, (Army Book 426). ABs 426 attached marked Exhibits "C-1" and "C-2".

I have searched my records but have failed to find any trace of the registered packages referred to having been recorded.

Should I be absent at any time for any purpose whatsoever, another clerk, who works with me, would be on duty. One or the other must be in the Office at all times. On the 31 October 1944 my assistant

Bs COMMISS

~~Second Witness For the Prosecution:~~

~~W12921 Cpl. Smith, L. B., continued:~~

was W13217 Pte. Glowa, E. C., C.W.A.C., who has since been repatriated to Canada. The system was that had these parcels been received she would have entered them in AB 426, but the Registered Packages referred to do not so appear.

I recognize Pte. Fairweather, the accused, who has been delivering mail and registered packages to P. and S. for several months.

Prior to the 31 October 1944 I would sign the Registered Advice List accompanying Registered Packages as a receipt to the driver for same, but as Pte. Fairweather, and other drivers, did not pick up these receipts I discontinued doing this, and merely entered the registered packages in A.B. 426, and obtained the signatures of the persons to whom the registered packages were addressed, in order to prove delivery.

Deleted. W.G. Pearson Capt.

Cross-examined by the Accused:

Q.: When the driver brings the mail in who is it delivered to?

A.: To me, except parcels and cigarettes which are delivered to Cpl. Spence.

Q.: Who is the authorized Mail Orderly Corporal?

A: Cpl. Spence is in charge of ordinary parcels and cigarettes, and I look after the rest.

Q.: Is it not true that at various times there has been more than one person handling mail at P and S?

A.: Yes, but not registers.

The accused declined to further cross-examine.

L. B. Smith

(W12921 Cpl. Smith, L. B.)

155 WMMS

~~Third Witness for the Prosecution:~~

~~B26159 Cpl. LAWRIE, R. B., R.C.A.S.C.,~~ having been duly sworn states:

I am B26159 Cpl. Lawrie, R. B., employed as N.C.O., in charge of Guillitine Section, P and S Detachment, C.M.H.Q.

Sometime prior to October 1944 I arranged, through a friend of mine, to have a watch sent to me from Canada, and paid the purchase price. As in January 1945 I had not received the watch I instituted enquiries resulting in receiving a letter from Mr. Ben Edelson, 24 Rideau Street, Ottawa, Canada, to the effect that the watch in question was sent to me by registered mail, on October 25, 1944, registered number 1482. I produce the letter received by me and identify it as such, attached hereto and marked Exhibit "D".

Deleted. P.J. Lesser Capt.

I did not receive any registered package on the 31 October 1944 nor during the months of November and December.

I did receive a registered package in approximately March 1945 containing a watch which was sent me by Mr. Ben Edelson to replace the one presumably lost. Mr. Edelson advised me by letter that he had sent me this watch to replace the one lost.

The accused declined to cross-examine the witness.

Robt. B. Lawrie.
(B26159 Cpl. Lawrie, R.B.)

~~Fourth Witness for the Prosecution:~~

D123409 Pte. KIRBY, D.W.L., R.C.A.S.C., having been duly sworn states:

I am D123409 Pte. Kirby, D.W.L., employed as Clerk at P and S Detachment, C.M.H.Q.

Deleted. P.J. Lesser Capt.

In November 1944 I received a letter from my Mother advising me that a watch had been ordered on October 1944 to be sent to me from the T. Eaton Company Limited, (Montreal).

In February 1945 as the watch had not been received

BS COMMOS

~~Fourth Witness for the Prosecution:~~

~~D123409 Pte. Kirby, D.W.L., continues:~~

by me I wrote home and told them and consequently inquiries were instituted at T. Eaton Company Limited, resulting in a letter being received at P and S Detachment, dated 21 March 1945, concerning the non-receipt of Registered Package, Montreal No. 8231, containing a man's wrist watch with square case, 15 jewel, rolled gold plate, stainless steel back and leather strap, mailed 19 October 1944 by the T. Eaton Company Limited, addressed to me. This letter was shown to me, and is attached hereto and marked Exhibit "E". I then gave the Certificate dated 23 March 1945 that I had not at that date received Registered Package No. 8231. Certificate attached hereto and marked Exhibit "F".

Deleted. Pte. Leever Capt.

I did not receive Registered Package No. 8231 on the 31 October 1944 nor have I received it since.

The accused declined to cross-examine the witness.

Dark Kirby
(D123409 Pte. Kirby, D.W.L.)

Pte. Capt.

FIRST

~~Fifth~~ Witness for the Prosecution:

Mrs. Elsie SMITH, 15 Manstone Road, Cricklewood, N.W. 2, having been duly sworn states:

I recognize Pte. Fairweather, the accused, whom I have known for the past year. Pte. Fairweather was residing at the same address as myself since 9 May 1944.

On or about the 14 April 1945 Staff-Sergeant Denton called at my house and as a result of his visit I made a statement to him which he took down in writing and which is as follows:

I have known Pte. Fairweather of the Canadian Army for the past twelve months. Since the 9 May 1944 we have been living as man and wife at the above address. Pte. Fairweather pays the rent.

With reference to the Canadian manufactured goods found by Staff-Sergeant Denton on our premises: these goods were brought home by Pte. Fairweather from time to time over a period of approximately five months.

B6

FIRST
~~Sixth~~ Witness for
the Prosecution:

Mrs. Elsie Smith, continues:

I have questioned Pte. Fairweather concerning the origin of the goods in question, and he has always informed me that these Canadian goods were received by him through the mail from his sister residing in Canada. We have used a quantity of this stuff from time to time, but not a great deal.

I have never seen a parcel containing these goods which have been brought by Pte. Fairweather to our residence, bearing his name and address. These parcels have always been free of any markings with the outer wrappings missing.

I know nothing about the Canadian goods found in our residence other than what Pte. Fairweather has informed me.

The three cartons which I handed over to Staff-Sergeant Denton are three of the cartons used by Pte. Fairweather to carry the goods brought home by Pte. Fairweather.

I have given a small quantity of the Canadian manufactured goods brought home by Pte. Fairweather to friends.

I have read over this Statement and it is true.

I identify the goods referred to which are now contained in a large wooden box as the goods which were taken from my house by Staff-Sergeant Denton, marked Exhibit "G".

The accused declined to cross-examine the witness.

Elsie E Smith.
(Mrs. Elsie Smith.)

SECOND
~~Sixth~~ Witness for
the Prosecution:

C30629 Staff-Sergeant DENTON, L.A., having been duly sworn states:

I am C30629 Staff-Sergeant Denton, L. A., of the S. I. S., Canadian Provosts Corps, C.M.H.Q.

Bs
Witness

SECOND ~~Third~~ Witness for the Prosecution:

C30629 Staff-Sergeant Denton, continues:

~~On the 10 April 1945 in consequence of a report~~ received in connection with non-receipt of two Registered Mail Packages at Printing and Stationery Detachment, and in accordance with instructions received I made certain inquiries. These inquiries revealed that on 19 October 1944 the T. Eaton Company Limited, Montreal, P. Q., Canada, despatched by registered mail No. 8231 one gentleman's 15 jewel wrist watch addressed to regimental number D23409 Pte. Kirby, D. W. L., of the P. and S. Detachment, Edmonton. There was also another registered mail package No. 1482 containing a gentleman's stainless steel wrist watch, which was mailed on 25 October 1944 by a jeweller, namely: Ben Edelson, 24 Rideau Street, Ottawa, Ontario, Canada. This parcel was addressed to B26159 Cpl. R. B. Lawrie, also of the P and S Detachment.

Army Book 426 which records all receipts of registered mail at P and S Detachment was examined by me and no registered mail of any description was recorded on the 31 October 1944 and the two registered items already referred to were not recorded in this book.

As a result of these complaints I proceeded to the No. 1 C.O.P.D. (F.P.O. 650) and took possession of a book P1166B containing Registered Articles Advice Lists. Examination of this book disclosed that on 31 October 1944 two registered packages, Numbers 8231 and 1482 were signed for by the signature of G. T. Fairweather on transfer from F.P.O. 650 to P. and S. Detachment, Edmonton. I identify the Registered Advice List marked Exhibit "B" as the one referred to.

Further inquiries revealed that the signature "G. T. Fairweather" appearing on this slip was regimental number L.1421 Pte. Fairweather, G.T. of the Canadian Army and attached to Cricklewood Garage, C.M.H.Q., and that on 31 October 1944 he was on duty driving a 15 cwt and carrying mail between F.P.O. 650 and P. and S. Detachment.

Deleted V.G. Pearce, Capt.

On the 13 April 1945 as a result of these inquiries I interviewed Pte. Fairweather concerning the two missing registered parcels and showed him Exhibit "B" which he readily agreed that his signature was contained thereon. I questioned him further in respect to the disposal of the parcels in question and he denied that he knew where they had gone to except that he delivered them to the P. and S. Detachment. Not being satisfied with the explanation given in this matter I took the accused into Military Custody and escorted him to 30 Henrietta Street, where he was handed over to the N.C.O., in charge for safe custody.

On the 14 April 1945 I proceeded to 15 Manstone Road Cricklewood, which is occupied by the accused and used as a private residence, together with a lady by the name of Mrs. Elsie Smith. As a result of a

SECOND

~~Sixth~~ Witness for the Prosecution:

C30629 Staff-Sergeant Denton, continues:

Conversation with Mrs. Smith I was invited into the house and received her permission to look around. A quantity of Canadian Manufactured Goods was found on these premises similar to the type of goods usually contained in gift parcels to Canadian Army Personnel. I identify Exhibit "G" as the goods referred to. I took possession of these goods and conveyed them to the S. I. S., Office, where they were locked up for safe-keeping.

On the 16 April 1945 I interviewed Pte.Fairweather the accused, and confronted him with the Canadian manufactured goods found in his private quarters. At first he said that he had purchased the goods in question from Canadian Soldiers now B.L.A. This was afterwards changed when he said he would tell the truth. I cautioned him and a voluntary statement in writing was taken from the accused, which is as follows:

"I Regimental Number L.1421 Pte. Fairweather have been cautioned by Staff-Sergeant Denton, that I am not obliged to say anything unless I wish to do so, but whatever I now say will be taken down in writing and may be given in evidence.

To show that I understand the above caution, I herewith append my signature.

(SIGNED) G. T. Fairweather.

I am employed as a truck driver conveying mail from the Canadian Overseas Postal Depot, known to me as the Brylcreem Plant, to the Printing and Stationery Branch, Edmonton. I have been engaged in this work for the past twelve months. I have been in the habit of making two trips a day to and from the Canadian Postal Depot, This mail would include registered mail. Upon arrival at the Printing and Stationery Branch I would hand over all the mail including the registered mail, to the Mail Orderly.

~~With reference to the two registered packages~~ Numbers 8231 and 1482 appearing on the ~~registered~~ transfer bill dated the 31st October 44, I agree that the signature appearing thereon is my signature, but I did not steal these registered ~~packages~~ and can give no explanation for their ~~disappearance.~~

Deleted. V.G. Pearce. Capt

I have been shown a wooden box containing a quantity of Canadian manufactured goods which were found in my residence at 15 Manstone Road, Cricklewood. The entire contents of this box was stolen by me from time to time. These goods represent the contents of approximately eight parcels. These parcels were stolen by me during the last three weeks and they were addressed to men already transferred to N.E.T.D. I do not remember any of the names or addresses appearing on these stolen parcels. These parcels for N.E.T.D. were handed to me at

As above

SECOND
~~Sixth~~ witness for
the Prosecution:

C30629 Staff-Sergeant Denton, continues:

the Printing and Stationery Branch for the purpose of returning same to the Postal Depot, but instead of doing so, I took off the outside wrappings and left them at my residence at 15, Manstone Road, Cricklewood.

Mrs. Smith the lady I am residing with at 15, Manstone Road, did not know that I had stolen these goods. I told her that I had received these parcels from Canada.

I accept full responsibility for these thefts and no others are implicated.

I have read over this statement and it is true.

(SIGNED) G. T. Fairweather.

Witnessed by: (Signed) L. A. Denton, S/Sgt. "
16-4-45

The accused declined to cross-examine the witness.

(C30629 Staff-Sergeant Denton, L. A.)

~~Seventh Witness for~~
the Prosecution:

B25334 Cpl. SPENCE, A. , R.C.A.S.C., having been duly sworn states:

I am B25334 Cpl. Spence, A., employed at P. and S. Detachment, C.M.H.Q., as Mail Orderly and in Charge of the Guard. I have been employed in that capacity for the past twelve months.

I recognize Pte. Fairweather, the accused, who was employed delivering mail to P. and S. Detachment and who also picked up out-going mail from our office.

When the mail was brought in by Pte. Fairweather He would usually place the mail bag between my desk and the desk of Cpl. Smith, in the Orderly Room. Usually I would cut the bag open and look for official mail. I would also look after ordinary parcels and cigarettes which may or may not be handled immediately, depending upon the volumn of work. The Registered Mail would be placed by Pte. Fairweather on Cpl. Smith's desk, as she handles all registered mail, and I have nothing to do with it.

Registered Mail received at P. and S. Detachment is very light in volumn. Only occasionally is such received.

Seventh Witness for the Prosecution:

B25334 Cpl. Spence, A. continues:

I have no knowledge of any registered packages having been received on the 31 October 1944, nor since, addressed to Cpl. Lawrie or Pte. Kirby. If such were received I may or may not have knowledge of them, in any case they would not be handled by me, they would be handled by Cpl. Smith. It would be the duty of Cpl. Smith to enter registered mail in A.B. 426, and dispose of as quickly as possible, obtaining the receipt of the person to whom the registered mail is addressed, in the book. I identify the two books A.B.426, now produced, as the ones used at P. and S. for Registered Mail, which are marked Exhibits "C1" and "C2". One book covers the period 19 Jan 1944 to 11 April 1945, the other covers the period 13 January 1943 to 26 March 1945.

Cross-examined by the Accused:

Q.: Is it not true that many times when I brought in the mail I put it by your desk and never interferred with it after?

A.: Not as a rule. You went to dinner.

Deleted W.J. Pearce Capt.

Q.: Is it not true that at times there was more than one person handling the mail?

A.: Two or three sometimes, depending upon the volumn of work.

Q.: On various occasions is it not true that there was no one in the Orderly Room whatsoever?

A.: I do not know. If I was not there I would not know. It has always been the rule there must be someone in there at all times. Someone must be there even to answer the telephone. It is the duty of someone to be there in order to receive the mail. If there was no one in the Orderly Room I would not leave it.

The accused declined to further cross-examine the witness.

A. Spence

(B25334 Cpl. Spence, A.)

Ds witness

THIRD
~~Ninth~~ Witness for
the Prosecution:

Mr. George DRAGE, 31 Rozel North Street, Clapton, S.W. 4., having been duly sworn states:

I am employed at the MT Section Chelsea Garage, C.M.H.Q., and one of my duties is to receive and distribute all mail.

I produce two books covering the period April 1944 to April 1945, wherein I recorded parcels received and receipted for by Canadian Army Personnel at Chelsea Garage, attached hereto and marked Exhibits "H1" and "H2".

I have searched my records of parcels received and delivered and failed to find where Pte. Fairweather ever received a parcel during the period April 1944 and April 1945.

The accused declined to cross-examine the witness.

George Drage
(GEORGE DRAGE)

FOURTH
~~Ninth~~ Witness for
the Prosecution:

K.54872 Cpl. MEIKLE, M. A., R.C.A.S.C., having been duly sworn states:

I am K.54872 Cpl. Meikle, M. A., employed as Administrative Corporal at Cricklewood Garage, C.M.H.Q., and have been so employed since 16 January 1945. My duties include receiving Ordinary Mail, all Registered Mail, Gift Parcels and Cigarettes, which are recorded and signatures obtained for same.

I produce herewith a book--Stock Book M.B.-93 Overseas, covering period 6 December 1944 to 13 April 1945, in which is recorded all parcels of comforts received from Canada and cigarette parcels which are receipted for by the persons to whom they are addressed. (Attached hereto and marked Exhibit "J".)

I recognize the Accused as Pte. Fairweather. I know him as a driver on strength C.M.H.Q., Garage. He does not deliver mail direct to me.

I have searched the book marked Exhibit "J" and failed to find any record of Pte. Fairweather

FOURTH
~~Ninth~~ Witness for
the Prosecution:

K.54872 Cpl. Meikle, M.A., continues:

ever receiving a parcel. Had a parcel been received at Cricklewood Garage addressed to Pte. Fairweather it would be recorded in the book marked Exhibit "J", and his signature obtained for same.

The Accused declined to cross-examine the witness.

(K.54872 Cpl. Meikle M.A.)

The Accused was cautioned in accordance with Rules of Procedure 4(e) as follows:

> Do you wish to make any statement or to give evidence upon oath? You are not obliged to say anything or give evidence unless you wish to do so, but whatever you say or any evidence you give will be taken down in writing and may be given in evidence.

The Accused decline to make any statement at this time.

The Accused does not call any witnesses for the Defence at the present time.

I HEREBY CERTIFY THAT the foregoing Summary of Evidence consisting of 12 pages was taken before me on the 23, 24, 25, 26 and 27 April 1945 at C.M.H.Q., in the presence and hearing of the Accused, and that R.P. 4 (C), (D), (E) and (F) were complied with.

(V. G. PEARCE) Captain,
Assistant Camp Commandant,
Canadian Military Headquarters,
Officer detailed to take the
Summary of Evidence.

16th April 45.

I Reg. No. L 142, Pte. Learmonth have been cautioned by S/Sgt. Durkin that I am not obliged to say anything unless I wish to do so, but whatever I may say will be taken down in writing and may be given in evidence.

To show that I understand the above caution, I herewith append my signature H.L. Learmonth

I am employed as a truck driver carrying mail from the Canadian Overseas Postal Depot known to me as the Bibby Cream plant, to the Printing and Stationery Branch, Edmonton. I have been engaged at this work for the past twelve months. I have been in the habit of making two trips a day to and from the Canadian Postal Depot. The mail would include registered mail. Upon arrival at the Printing and Stationery Branch, I would hand over all the mail including the registered mail to the Mail Orderly.

With reference to the two registered packages Nos 8231 and 1482 appearing on the registered transfer bill dated 3rd Oct 44. I agree that the signature appearing thereon is my signature, but I did not steal these registered packages and can give no explanation for their disappearance.

I have been shown a wooden box containing a quantity of Canadian manufactured goods which were found in my residence at 10 Marston Road, Crichlewood. The entire contents of this box was stolen by me from time to time. These goods represent the

H.L. Learmonth witness

16th April 45.

I Reg. No. 1421, Pte. Fairweather have been cautioned by S/Sgt. Denton that I am not obliged to say anything unless I wish to do so, but whatever I may say will be taken down in writing and may be given in evidence.

To show that I understand the above caution, I herewith append my signature. H. Fairweather

I am employed as a truck driver conveying mail from the Canadian Overseas Postal Depot known to me as the Bridge Cream plant, to the Printing and Stationery Branch, Edmonton. I have been engaged at this work for the past twelve months. I have been in the habit of making two trips a day to and from the Canadian Postal Depot. The mail would include registered mail. Upon arrival at the Printing and Stationery Branch, I would hand over all the mail including the registered mail to the Mail Orderly.

With reference to the two registered packages Nos 8231 and 1482 appearing on the registered transfer bill dated 3rd Oct 44. I agree that the signature appearing thereon is my signature, but I did not steal these registered packages and can give no explanation for their disappearance.

I have been shown a wooden box containing a quantity of Canadian manufactured goods which were found in my residence at 10 Mansion Road, Cricklewood. The entire contents of this box was stolen by me from time to time. These goods represent the

H. Fairweather

witness

carton of approximately eight parcels. These parcels were stolen by me during the last three weeks and they were addressed to men already transferred to N. E.T.D. I do not remember any of the names or addresses appearing on these stolen parcels. These parcels for N. E. T. D. were handed to me at the Printing and Stationery Branch for the purpose of returning same to the Postal Dept, but instead of doing so, I took off the outside wrappings and left them at my residence at 15 Manston Road, Leicester.

Mrs Smith the lady I am residing with of 15 Manston Road, did not know that I had stolen these goods. I told her that I had received these parcels from Canada.

I accept full responsibility for these thefts and no others by implication.

I have read over this statement and it is true.

W J Saunders civ

Lewis Devlin S/Sgt.
16-4-45

IN THE CASE OF: L.14.21 Pte. FAIRWEATHER, C. T.

LIST OF WITNESSES
FOR
THE PROSECUTION.

1. Mrs. ELSIE SMITH, 15 Manstone Road, Cricklewood, N. W. 2.

2. C.30629 Staff-Sergeant DENTON, L.A., S. I. S., Canadian Provost Corps, C.M.H.Q.

3. Mr. GEORGE DRAGE, 31 Rozel North Street, Clapham, S.W. 4., employed at Chelsea Garage, C.M.H.Q.

4. K.54872 Cpl. MEIKLE, M. A., R.C.A.S.C., Cricklewood Garage, C.M.H.Q.

COPIES

IN THE CASE OF: L.14421 Pte. FAIRWEATHER, G. T.

LIST OF EXHIBITS.

"A"	Packing case containing sundry goods possessed by Staff-Sergeant Denton at residence of the Accused.
"B-1"	Book containing record of parcels received and distributed at Chelsea Garage, C.M.H.Q.
"B-2"	Book containing record of parcels received and distributed at Chelsea Garage, C.M.H.Q.
"C-1"	Record of parcels received and distributed at Cricklewood Garage, C.M.H.Q.
"C-2"	Record of parcels received and distributed at Cricklewood Garage, C.M.H.Q.

ARMY FORM B.296 (WAR).

Statement as to Character and Particulars of Service of Accused.

(For Use at Trials by Field General Courts-Martial only).

Number.	*Rank.*	*Name.*	*Regiment (or as the case may be).*
L-1421	Pte	George Tait FAIRWEATHER	RCASC CMHQ

NOTE.—The Field Conduct Sheet is to be produced in Court with this statement but is not to be annexed to the proceedings. The numbers herein stated should correspond with the number of ENTRIES in the Field Conduct Sheet, prominence being given to the most serious offence in each entry. If the charge is for drunkenness or absence without leave, the entries for drunkenness or absence, as the case may be, should be stated separately. Any recognized special acts of gallantry or distinguished conduct recorded on the Field Conduct Sheet should also be inserted here.

1. The following is a fair and true summary of the entries in the Field Conduct Sheet of the accused, exclusive of convictions by a court martial or a civil court :—

For A.A.Sec.15(1) 1 times.

For A.A.Sec.40. 1 times.

For ____ ____ times.

For ____ ____ times.

Date of first entry in Field Conduct Sheet 13 Feb 42

Date of last entry in Field Conduct Sheet 2 Jan 44

2. Previous convictions of the accused by a court martial or a civil court are set out in the Schedule overleaf.

*Strike out if not applicable.

~~3. The accused was present in the service from the~~ ~~beginning of the~~ ~~day of~~

4. The accused has been awaiting trial on the present charges for Nil days in civil custody; and for 62 days in military custody, *i.e.*, Nil days in open arrest, ____ days in close arrest; of which 38 days were spent in hospital.

5. The present age of the accused is 46 years

6. The date of his attestation is 30 Sep 39

~~enlistment~~

~~7. The service of the accused is as follows:~~

8. The accused is in possession of† 1939-43 Star.
B.W. and V. Medals
CVSM and Clasp.

† State the military decorations (if any) held by accused.

~~9. The accused was tried by a court martial on the following charges, convicted and sentenced as follows:~~

~~Date of trial.~~

~~10. The accused was convicted by a civil court~~

~~11. The accused was bound over~~

~~12. The accused was~~

INSTRUCTION.—*If any matter in any of the above paragraphs cannot be verified from the regimental books the paragraph must be struck through.*

By Order

W1141 W1.8670/668 100,000 4/42 A.& E.W.Ltd. Gp.498
W1460 W1.20158/1872 60,000 9/42 " " Forms.B.296(War)/2

SCHEDULE OF CONVICTIONS BY A COURT-MARTIAL OR CIVIL COURT.

Description of Court by which tried.	Date and Place of Trial.	Charges upon which convicted.	Sentence of the Court.	Punishment remitted or sentence suspended.
F.G.C.M.	Field 19 Apr 43	A.A.Sec. 41(5).	Six months detention.	
F.G.C.M.	Field 1 Sep 43	(1) A.A.Sec. 18(4). (2) A.A.Sec. 40.	120 days detention.	

I HEREBY CERTIFY that the foregoing particulars, which have been extracted from the regimental books in my custody, are correct to the best of my knowledge and belief.

Signed this 14th day of ~~April~~ June 1945.

Records Officer
CANADIAN MILITARY HEADQUARTERS.

No L.1421 Name FAIRWEATHER. G.T. | Sqn, Battery, or Company H.Q. | Corps C.I.C. | Date of enlistment 30 Sep 39 | GC Badges | Service or Proficiency Pay | MFM 6 (AFB 122) 40/P&S/136 (9438)

Date of last entry in Company Conduct Sheet | No and date of last drunk Nil. | Period not reckoning towards freedom from extra fine | Sheet No 1 | Signature OC Company, etc | Character

Place	Date of offence	Rank	Cases of drunkenness	OFFENCE	Names of Witnesses	Punishment awarded	Date of award or of order dispensing with trial	By whom awarded	Remarks
				Previous Sheet Destroyed 1 Jun 41. No previous entry.					
Field	13 Feb 42	Pte.	-	AA.Sec.40. WOAS. Did leave W.D. Vehicle unattended.	Sgt.Wallace. Cpl.Knox. Documentary.	120 hours Detention	16.Feb 42	Lt.Col. E.J.Scott-Dudley.	
				Was on 19 Apr 43 tried by F.G.C.M. 1st Charge: AA.Sec.41(5).Findings Guilty. Sentence to undergo 6 mths detention. Confirmation. Findings and sentence confirmed by H.D.Graham, Brigadier. Comd. 1 CIB on 21 Apr 43. Arrest: Under Close Arrest. Awaiting trial from 1700 hrs.24 Mar 43 to 1415 hrs. 19 Apr 43.		Forfeits 26 dys. pay. FR&I.(O/S) 149(1)(c)(ii) & 143 days. Forf. of pay FR&I(O/S) 149(1)(b).Total Forf.179 dys.pay.		F.G.C.M.	Released from Detention Barracks (Canadian). 18 Aug.43.

(PTO)

Place	Date of offence	Rank	Cases of drunkenness	OFFENCE	Names of Witnesses	Punishment awarded	Date of award or of order dispensing with trial	By whom awarded	Remarks
Field.	19 Aug 43	Pte.	-	1.Sec 18(4) In that he on 19 Aug 43 stole one suit of Battle Dress the property of K.84918 Cpl. Mackintosh, J.W., a person subject to Military Law. 2.AA.Sec.40. In that he on the 19 Aug. 43 was in improper possession of 1 suit of Battle Dress the property of K.84918, Cpl. Mackintosh, J.W., a person subject to Military Law.	Cpl. Mackintosh.	120 days. Detention. Granted remission of 36 days of Sentence. Released from Detention 23 Nov 43.	1 Sep 43.	F.G.C.M.	
Field.	2 Jan 44	Pte.	-	AA.Sec.15(1) A.W.L. 1 Day.6 hrs.	Cpl. Stoner. N.	Forfeits 6 days pay. FR&I.149 4.1.44 (1)(b). and 6 days. F.P.		Lt.Col. H.T. Kempton.	2 days pay. FR&I. 149(1) (a)

Certified true copy as of 27 Apr 45.

Captain.Records Officer.

Officer having custody of original.

10M-9-46 (9529)
M.F.B. 3878

H.Q.C. 55-F-882 CONFIDENTIAL

DEPARTMENT OF NATIONAL DEFENCE—OTTAWA, CANADA

SUBJECT

FIELD GENERAL COURT-MARTIAL

FAIRTHORNE, M. B-81561 PTE

CONFIDENTIAL
H.Q.C. 55-F-882

CENTRAL REGISTRY	DATE	P.A. OR S.F.	INITIALS	REFERRED TO	FOR	INITIALS	DATE
				(If purpose for which referred cannot be expressed on one line, enter here "With Minute")			2-12-46

OVERSEAS COMBINED

NOTICE

1. Files should be retained no longer than absolutely necessary. If a file is frequently needed at short intervals, it is better to R.F. it for two or three days than keep it out of Central Registry indefinitely. This ensures it being completed and kept in order, and also gives other offices an opportunity to see same.
2. Central Registry should be notified whenever a file is passed direct to another branch.
3. All outgoing letters should bear the official file number.

PASS THIS FILE IN ENVELOPE

B-81561 Pte. Fairthorne, M.
No.1 M.T.V.R.D.

Orig

Army Form A.3.

Correspondence to be PINNED here.

Form for Assembly and Proceedings of Field General Court Martial on Active Service.

PROCEEDINGS.

A.
Order convening the Court.

On Active Service, this 25th day of July, 19 41.

Whereas it appears to me, the undersigned, an officer in Command of CANADIAN BASE UNITS, CDN ARMY, on active service, that the persons named in the annexed Schedule, being subject to Military Law, have committed the offences in the said Schedule mentioned.

And whereas I am of opinion that it is not practicable that such offences should be tried by an ordinary General Court Martial; ~~[omit that it cannot be practicable to delay the assembly of a General Court Martial without material detriment to the public service or the interests of justice]~~ P.

* Omit where Convening Officer is a Commanding Officer as is of Field Rank.

I hereby convene a Field General Court Martial to try the said persons, and to consist of the Officers appointed or detailed hereunder.

~~[I direct that the following :—~~

*~~(1. The Officers to form the Court~~

*~~(2. A Field Officer as President~~ P

~~for the following reason, namely :~~]

* Omit if not applicable.

Judge-Advocate, Lieut. J.R.A. Beullac, C.M.H.Q.

Proceedings received 23/7/41 Kitchener Camp Reserve Officers

NOTE.—The President must be named. The members and waiting members (if any) may be mentioned by name, or the number and ranks and the unit to which they belong may alone be named. In the latter event, the ranks, names, &c., of the members of the court, as constituted, will be recorded on the proceedings.

President.

Rank.	Name.	Regiment.
Major	A.J. Flood	No.1 Cdn Eng Hldg Unit

Members.

Rank.	Name.	Regiment.
Captain	G.F.L. McKenzie	No.1 Cdn Sigs Hldg Unit
Lieutenant	C.D. Beatty	Lorne Scots
Lieutenant	R.M. Johnston	Lorne Scots

* Must be signed personally by the Officer actually in command at the time, and all alterations in the composition of the Court to be initialled by him.

*Signed L. F. Page, Major-General
Commanding Cdn Base Units, Cdn Army.
Convening Officer.

SCHEDULE.

Number, Rank (a), Name and Unit of Accused (b)	Offence charged	*Plea	Finding, and if Convicted, Sentence (c)	How dealt with by Confirming Officer (d)
B-81561 PTE. FAIRTHORNE, M. No.1 M.T.V.R.D., R.C.A.S.C.	First Charge A.A. sec 15(4) Alternative Second Charge A.A. sec 40 Third Charge A.A. sec 15(4) Alternative Fourth Charge A.A. sec 40 See charge sheet attached.	not guilty not guilty not guilty not guilty not guilty	not guilty guilty guilty not guilty 1 years detention 30 July 1941	I hereby confirm the finding and sentence but remit three months of sentence

* Question to be asked of accused, if he pleads not guilty (R. of P. 39 (A)):—
"Do you wish to apply for an adjournment on the ground that any of the rules relating to procedure before trial have not been complied with, and that you have been prejudiced thereby, or on the ground that you have not had sufficient opportunity for preparing your defence?"
Answer (*to be recorded on separate sheet if necessary*):— No Sir.

(Signed) [illegible] Major-General (Signed) [illegible] President.
Commanding Cdn Base Units, Cdn Army. J.A. Beullac Lieut Judge Advocate
Convening Officer (c)

(a) Appointment acting rank or acting appointment, if any, to be stated in brackets after the substantive rank.
(b) Unless unavoidable, not more than three names are to be entered on one form, and in serious cases one only.
(c) Recommendation to mercy, if any, to be inserted in this column.
(d) It is not necessary that the Confirming Officer should sign his name in this column. Initials are sufficient.
(e) Must be signed by the same Officer who signs on the first page, and all alterations in the first two columns of the Schedule to be initialled by him.

Evidence and Charge Sheets (if necessary) to be PINNED here.

B. Certificate of President as to proceedings.

I certify that the above Court assembled on the 30th day of July, 1941, and duly tried the persons named in the Schedule, and that the plea, finding, and sentence in the case of each such person were as stated in the third and fourth columns of that Schedule.

I also certify that :—
1. The members of the Court
2. The witnesses
*(3. ~~The interpreter~~) Judge-Advocate
*(4. The officers under instruction)

were duly sworn.

* Omit if not applicable.

Signed this 30th day of July 1941.

President of the Court Martial.
J.A. Beullac Lieut Judge Advocate

C. Certificate in case of death sentences.

* See footnote (b) on page 762 M.M.L. 1929.

I certify that the terms of *A.C.I. 370 of 1918 have been complied with.

Signed this ~~day of~~ 19 .

President of the Court Martial.

D. Confirmation.

I have dealt with the findings and sentences in the manner stated in the last column of the Schedule, and, subject to what I have there stated, I hereby confirm the above findings and sentences.

*~~(I direct that the soldier named in the margin be not committed to prison or detention barrack until further orders.)~~

* To be omitted unless penal servitude, imprisonment or detention having been awarded, the Confirming Officer either has no authority to commit to prison or detention barrack, or, having such authority, recommends suspension.

Signed this 7th day of August 1941

J.H. Mclaren Brigadier
Confirming Officer.

Promulgated and extracts taken in the case of

(a) (Dated) 9th Aug 1941 (Signed) J.H. Mclaren Lt-Col.

Promulgated and extracts taken in the case of

(Dated) (Signed)

Promulgated and extracts taken in the case of

(Dated) (Signed)

(a) When several cases are promulgated in one unit on the same day the Officer need only sign once.

[84] Wt. 30092/1316 70m 2/41 W. & Co., Ltd. Gp. 748/2

CHARGE SHEET

The accused, B-61561, Pte Fairthorne, M., No. 1 M.T.V.R.D. R.C.A.S.C. C.A. (Overseas), a soldier of the Canadian Army Overseas, is charged with:

WHILE ON ACTIVE SERVICE:

1st Charge
A.A. Sec 16 (h)

stealing public property,

in that he, at Bordon, Hants., on 16 May 41, stole one loaf of bread, public property, from the 23rd Field Bakery, R.A.S.C., Bordon, Hants.

2nd Charge
(Alternative)
A.A. Sec 40

conduct to the prejudice of good order and Military discipline,

in that he, at Bordon, Hants., on 16 May 41, was improperly in possession of one loaf of bread, public property, on the charge of the 23rd Field Bakery, R.A.S.C., Bordon, Hants.

3rd Charge
A.A. Sec 16 (h)

stealing public property,

in that he, at Bordon, Hants., on 16 March 41, stole one ham (or gammon), public property, from the Regimental Cookhouse of No. 1 M.T.V.R.D. R.C.A.S.C. C.A. (O), SUCH Ham (or gammon) being of a value of £1.0.0.

4th Charge
(Alternative)
A.A. Sec 40

conduct to the prejudice of good order and military discipline,

in that he, at Bordon, Hants., on 16 March 41, was improperly in possession of one ham (or gammon), public property, on the charge of No. 1 M.T.V.R.D. R.C.A.S.C. C.A. (O).

W. Barrett Lt.Col.
(C.M. Barrett)
Commanding Officer,
No. 1 MTVRD RCASC CA (Overseas).

Bordon, Hants
22 July 41.

To be tried by Field General Court Martial

L. F. Page
(L.F. Page) Major-General
Commanding Cdn Base Units.

Bordon, Hants
This 29th day of July 41.

J. Mc Knight Major
30 July 1941
JAAG
J.A.

MEDICAL OFFICER'S CERTIFICATE

K.R.(CAN)PARA 557

This is to certify that I have TO-DAY examined this morning, No B-81561 Private Fairthorne, M. of No 1.M.T.V.R.D./R.C.A.S.C./C.A.-A.F./and in my opinion he is ~~unfit~~ fit to stand trial by Court Martial.

Cdn Medical Centre,
Bordon, Hants, England,
30th JULY 1941.

R.C.A.M.C.
UNIT MEDICAL OFFICER

No. B-81561, PTE. M. FAIRTHORNE, No. 1 M.T.V.R.D., tried by Field General Court Martial at BORDON, Hants. on the 30th day of July, 1941.

The order convening the Court, the charge sheet, summary of evidence and medical certificate are laid before the Court.

The Court satisfy themselves as provided by R.P. 22 and 23.

The accused is brought before the Court.

Prosecutor:-	Lieut. R. Erskine,	No. 1 M.T.V.R.D.
Defending Officer:-	Lieut. C.C. Hill,	No. 1 C.M.G.H.U.

At 1100 hrs the trial commences.

The order convening the Court is read, signed by the President, and attached to the proceedings.

The names of the President and members of the Court are read over in the hearing of the accused, and they severally answer to their names.

Q1. Do you object to be tried by me as President, or by any of the officers whose names you have heard read over?
A1. No, sir.

The President, members and judge-advocate are duly sworn.

Q2. Do you object to B66944, Pte. T. Pyburn, R.Regt.C., acting as shorthand writer?
A2. No, sir.

The shorthand writer is duly sworn.

The officers under instruction are duly sworn.

The charge sheet is signed by the President and annexed to the proceedings.

The accused is arraigned upon each charge in the above mentioned charge sheet.

Q3. Are you guilty or not guilty of the first charge against you, which you have heard read?
A3. Not guilty, sir.
Q4. Are you guilty or not guilty of the second or alternative charge against you, which you have heard read?
A4. Guilty, sir.

DEFENDING OFFICER: Sir, may I say a word at this time. Under rule 37 and the notes thereto, when an accused is charged with an alternative charge he may of course plead guilty or not guilty, as he desires. If however he pleads not guilty to the more serious charge, and guilty to the alternative charge, the Court has the power to try him on the charge to which he has pleaded not guilty or to enter a plea of guilty on the alternative charge. I would ask the Court to consider the point at this time, and if they are of opinion that a plea of guilty should be entered to the alternative charge, then I would suggest that be done and that the first charge be forgotten about.

THE PROSECUTOR: Sir, the Court feels that the first charge should be tried in the usual manner. The prosecution believes that the evidence which will be adduced before the Court will be sufficient to maintain that charge, and I ask that the first charge be tried.

Q5. Are you guilty or not guilty of the third charge against you, which you have heard read?
A5. Not guilty, sir.

Q6. Are you guilty or not guilty of the fourth charge, or alternative charge, against you which you have heard read?
A6. Not guilty, sir.

The Court is closed to consider the submission of defending officer.

The Court is re-opened.

THE COURT: The Court has directed that a plea of Not Guilty be entered in answer to the second charge.

Q7. Do you wish to apply for an adjournment on the ground that any of the rules relating to procedure before trial have not been complied with, and that you have been prejudiced thereby, or on the ground that you have not had sufficient opportunity for preparing your defence?
A7. No, sir.

The prosecutor makes no opening address.

1st witness for prosecution) No. B-61509, CPL. THOMAS CADE, No. 1 M.T.V.R.D.,) being duly sworn, is examined by the prosecutor:-

Q8. State your Number, rank, full name and unit?
A8. No. B-61509, Cpl. Thomas Cade, No. 1 M.T.V.R.D.
Q9. What appointment do you hold, if any?
A9. Corporal of the regimental police.
Q10. What were your duties on the 16 May 41?
A10. Corporal of the regimental police.
Q11. Tell the Court in your own words what you know personally of the charges against Pte. Fairthorne, the accused?
A11. Sir, on the 16 May 41 I was called over to the orderly room by A/C.S.M. McDonald and I was instructed to proceed with him and Capt. German to search Pte. Fairthorne's room, and on proceeding to the room I was told to search Pte. Fairthorne's kit, and I called Pte Fairthorne over to his locker and proceeded to search through his kit, and on searching his locker I came across a loaf of bread which I took in.
Q12. This locker you searched, was that locker indicated to you by the accused?
A12. Yes sir, his own locker.
Q13. Was it locked at the time?
A13. No sir, open.
Q14. I produce to you here a loaf of bread. Have you ever seen that loaf of bread before?
A14. I have. It is the same loaf of bread, sir.
Q15. Is that the loaf of bread you found in the accused man's locker?
A15. Yes, sir.
Q16. How can you identify it?
A16. There is a slice of bread taken off it and a hunk of butter is pressed into the centre of the loaf where the slice of bread was taken off.

EXHIBIT "A" - One loaf of bread.

Q17. Was the accused present when you discovered this loaf of bread?
A17. He was, sir.
Q18. Who else was there at the time?
A18. Capt. German and A/C.S.M. McDonald, myself and Pte Fairthorne.

CROSS EXAMINED BY THE DEFENDING OFFICER

Q19. Have you any idea how that loaf of bread came to be in the locker?
A19. Pte Fairthorne said he got it first thing in the morning from the bake-shop, that is all I know.
Q20. Is there anything on that bread to indicate it was public property?
A20. All I know is it was warm and in his locker and a slice was taken off and this butter put in its place.

2nd witness) No. D-91995, SGT. J.A. McDONALD, No. 1 M.T.V.R.D.,
for) being duly sworn, is examined by the prosecutor:-
prosecution)

Q21. State your No., name, rank and appointment, if any?
A21. I am No. D-91995, Sgt. J.A. McDonald of No. 1 M.T.V.R.D.
Q22 On the 16 May 41 what were your duties?
A22. I was Acting CSM.
Q23. Tell us in your own words what you know of the charges against the accused, Pte Fairthorne?
A23. In my capacity as CSM I had occasion to search the locker of the accused in the presence of the accused, and was accompanied by the Corporal of the R.P., and there found evidence which has already been presented - a loaf of bread.
Q24. Do you recognise this exhibit A?
A24. Yes sir, that is the loaf of bread.
Q25. How do you recognise it?
A25. It had butter stuck on the side of it and there were markings on the top of it.
Q26. What was the marking?
A26. It was a "D", I think.
Q27. But this loaf of bread was definitely taken out of the accused man's locker in your presence and in the presence of Cpl. Cade?
A27. Yes, sir.

THE PROSECUTOR: It may save time if I go a little further with each witness, rather than recall them later on.

JUDGE ADVOCATE: Each witness can testify in one breath what he knows of all the charges.

Q28. BY THE PROSECUTOR:- What further do you know of this case?
A28. I searched the locker, confiscated the bread, and I know nothing further about it, sir.

Defending Officer declines to cross-examine this witness.

Q29. BY THE COURT: What suspicion did you have that led you to search this locker?
A29. I was given orders to search the locker of the accused, sir.

1st witness) No. B-81509, CPL. THOMAS CADE, No. 1 M.T.V.R.D.,
for) being previously sworn, is recalled by the prosecutor.
prosecution)

JUDGE ADVOCATE: I would point out to you that you either make your case or you don't. You cannot recall witnesses as an afterthought. You may recall witnesses in rebuttal, though.

THE PROSECUTOR: It was in connection with statements made by the accused. I will waive any further examination of this witness, sir.

3rd witness) No. D-91997, SGT. M.J. TERHUNE, No. 1 M.T.V.R.D.
for) being duly sworn, is examined by the prosecutor:-
prosecution)

Q30. You are No. D91997, Sgt. M.J. Terhune, of No. 1 MTVRD?
A30. Yes, sir.
Q31. What do you know, in your own words, concerning the charge of stealing laid against the accused?
A31. On 16 May 41 I was ordered if possible to find out the origin and if possible identify that loaf of bread, as to where it came from. I went to the 23 Fd Bakery and there met a S/Sgt who identified the bread.

DEFENDING OFFICER: That is purely hearsay. This man took the loaf of bread to someone else who is not here . If this S/Sgt can identify this loaf of bread, then he is the proper witness but not this witness.

THE PROSECUTOR: I wish to establish that this bread was taken over for identification.

JUDGE ADVOCATE: Did this witness identify it?
THE PROSECUTOR: He took it over and I am going to ask him if it is the same loaf of bread.
JUDGE ADVOCATE: I think the reason why this witness should be excused now is to speed up this evidence here.
DEFENDING OFFICER: I wish this objection noted. This witness can prove that that is the loaf of bread he took over to the 23 Fd Bakery, and then he can go on to say, "Sgt. So-and-So said to me, 'That is my loaf of bread,'" but that is nothing but pure hearsay.
JUDGE ADVOCATE: Hearsay of course should be excluded. The witness had better retire while we clear this matter up.

The witness retired.

THE PROSECUTOR: I intend by the next question to identify the loaf of bread and show that it was taken from the 23 Fd Bakery, and to show that a certain statement was made by the accused in the company of this witness and also in the presence of the next witness and the one following.
JUDGE ADVOCATE: Under what circumstances was this statement made by the accused?
THE PROSECUTOR: The following morning, in the C.O's. office and as a result this witness, in company with the accused, proceeded to the 23 Fd Bakery.
JUDGE ADVOCATE: Was any charge laid against the accused then?
THE PROSECUTOR: Yes sir, a charge of stealing first.
JUDGE ADVOCATE: When he was before his C.O. was he informed then of the charge against him?
THE PROSECUTOR: Yes, sir.
JUDGE ADVOCATE: When was the statement made?
THE PROSECUTOR: The morning of the 17th, immediately after the adjournment of the C.O's. orderly room.
JUDGE ADVOCATE: It was made to whom?
THE PROSECUTOR: To the C.O. in the presence of this particular witness and other witnesses.
JUDGE ADVOCATE: Was the accused up for orders then?
THE PROSECUTOR: Yes sir, he was.

The Court is closed for consideration.

The Court is re-opened.

3rd witness) for prosecution) No. D-91997, SGT. M.J. TERHUNE, No. 1 M.T.V.R.D., previously sworn, is recalled and examined by the prosecutor:-

Q32. Do you recognise this loaf of bread?
A32. Yes, sir.
Q33. How do you recognise it?
A33. By the initial "D" on the top of the loaf.
Q34. Where did you last see this loaf of bread?
A34. In the C.O's. orderly room.
Q35. When next did you see it?
A35. This is the next time.
Q36. This loaf of bread which you identify, from the moment it was handed to you what did you do with it?
A36. Took it to the 23 Fd Bakery to try to find the origin of the bread, and that was the loaf.

The defending officer declines to cross-examine this witness.

4th witness) for prosecution) No. 103264, S/SGT. R.G. MUIREY, 23rd Field Bakery, R.A.S.C., being duly sworn, is examined by the prosecutor:-

Q37. You are No. 103264, S/Sgt. R.G. Muirey, of the 23 Fd Bakery, RASC?
A37. I am, sir.
Q38. What were your duties on the 16 May 41?
A38. Oven foreman.
Q39. I produce to you a loaf of bread, exhibit A; can you identify that loaf of bread?
A39. Yes, sir.

Q40. How?
A41. By the mark on the top of it.
Q42. What is that mark?
A42. The letter "D".
Q43. Can you tell the court when that loaf of bread was baked?
A43. On the 16 May 41, I believe, taken from the oven about 6.45 in the morning of the 16 May 41.
Q44. How can you tell that?
A44. By the mark on the top, and I examined the loaf two hours after it was baked.
Q45. Where was that loaf taken to after it was baked?
A45. To the bread store.
Q46. Did any persons have access to that bread store?
A46. Well, there is a staff working there baking the bread.
Q47. And anyone having access to that bread store could have got to it?
A47. Yes, sir.
Q48. When would the break baked on the morning of the 16 May 41 be issued?
A48. At eight o'clock on 17 May, sir.
Q49. Would any loaves possibly be issued prior to that time?
A49. No, sir.
Q50. Could a loaf of bread - this particular loaf of bread - be obtained at any point other than the bread stores?
A50. No, sir.

CROSS EXAMINATION BY THE DEFENDING OFFICER

Q51. You say this bread came out of the oven about 0645 hrs on 16 May 41?
A51. Yes, sir.
Q52. After it comes out of the oven where does it go?
A52. To the bread store.
Q53. Was anyone on duty at the bread stores?
A53. Yes, sir.
Q54. At that time?
A54. Yes, sir.
Q55. How could a loaf of bread get away from the bread stores with a staff on duty at that time?
A55. We pack the bread at the back and there are four ovens going at a time, four racks being carried out at a time, so there are three of them lying at the door, you see.
Q56. You say there are four ovens going. I still don't understand you. Do you mean your men are so busy they cannot be everywhere at once?
A56. It is taken in in racks, sir.
Q57. Yes, but your staff is there all the time?
A57. Yes, sir.
Q58. And if any unauthorised persons came in, wouldn't they be seen?
A58. The bread could be taken from the door, though, without anyone seeing it.
Q59. You stated that loaves could not be issued prior to the 17 May. Why could they not be?
A59. They are only authorised by the army to be issued when 24 hours old; they are only authorised by the army to issue bread 24 hours old.
Q60. Isn't it sometimes issued previously?
A60. Had it been issued it would not have been issued before eight o'clock in the morning.
Q61. But if there is a shortage it might be issued before it is 24 hours old?
A61. It might be, yes sir.
Q62. Now, what time did you see this loaf of bread?
A62. Between eight and nine.
Q63. This letter "D", is that on every loaf of army bread?
A63. On every loaf made on that particular day.
Q64. What would be the distinguishing marks made the following day?
A64. "E".
Q65. Is there a serial letter for each day of the week?
A65. Yes, sir.
Q66. And how is that mark put on?
A66. By a wooden docker.

[Page 6 follows]

4th witness for prosecution) LIEUT. D.W. TURNBULL, No. 1 M.T.V.R.D., being duly sworn, is examined by the prosecutor:-

Q67. You are Lieut. D.W. Turnbull of the No. 1 M.T.V.R.D.?
A67. Yes, sir.
Q68. What is your appointment, if any?
A68. Acting Quartermaster, No. 1 M.T.V.R.D.
Q69. What were part of your duties on the 15 Mar 41?
A69. I attended with the C.O. at an inspection of the cookhouse, and at that time inspected the meat store, and while there I noticed a side of bacon and a ham; they were on a shelf on the left hand side of the meat store. I particularly noticed it because the ham was sitting on top of the bacon.
Q70. This ham on top of the bacon, how much would you estimate it weighed?
A70. That I could not state; I could not estimate the weight of the ham, but it was a gammon of ham; I would say it would be probably about eight inches long.
Q71. It was a whole ham, was it?
A71. Yes, sir.
Q72. What further knowledge have you concerning the affairs in the kitchen of the unit on the 15-16 Mar 41?
A72. On the evening of 16 Mar Pte. Fairthorne ---
Q73. Just a moment. I would like to get your own knowledge of the case, and not mention what the accused might have said. Just what happened as far as you are concerned on the 16th?
A73. On the 16 Mar as a result of a conversation I had with Pte Fairthorne - I inspected the meat store at Louisburg Barracks West and found the bacon missing at that time.

The defending officer declines to cross-examine this witness.

Q74. BY JUDGE ADVOCATE: Tell the court exactly what you found missing on the day you made your inspection?
A74. At the time of the inspection on Saturday morning I noticed the side of bacon, which would be about 20 inches long, with the ham on top of it. There were two or three other hams in the cookhouse at the time but I paid no particular attention to them. On the evening of Sunday, the 16th, at eight o'clock I inspected it again and I noticed the bacon was gone and the ham on top of it was gone. There were a few trimmings of bacon on the shelf and I further ascertained that no bacon had been used for the men's meals between the time of the inspection on the Saturday morning and 2206 hrs on Sunday; there had been no ham or bacon used in the interval.

DEFENDING OFFICER: In view of that question, there is one matter I would like to ask this witness. Dealing entirely with this last statement, I would like to know if he knew how many hams there were in the meat store when he made his first inspection on 15 Mar?

THE PROSECUTOR: I think the witness did state there were one or two additional hams.

DEFENDING OFFICER: He only stated that in answer to the questioning of the Judge Advocate, but in his examination in chief he only made reference to the one ham on top of the side of bacon.

Q75. BY DEFENDING OFFICER: Do you know how many hams there were in the meat stores when you made your inspection on 15 Mar?
A75. I don't know any definite figure, but I do know very definitely there was one on top of the bacon and one or two possibly that were in the meat store, but I paid no particular attention to them.

(Page 7 follows)

5th witness for prosecution) No. B-82829, PTE. G.A. STEWART, No. 1 M.T.V.R.D., being duly sworn, is examined by the prosecutor:-

Q76. Tell the Court what your duties consisted of on the 16 Mar 41?
A76. I was Corporal i/c of the kitchen on the 16 Mar.
Q77. Were you in the same position on the 15th?
A77. Yes, sir.
Q78. In your own words will you tell the court what you know concerning the charge against the accuse, Pte Fairthorne?
A78. Well, on Saturday morning we got in some bacon and ham and it was in the stock room in the kitchen, and on Sunday night Mr. Turnbull had me come up and we found out that the ham and a piece of bacon was missing and also a case of strawberries.
Q79. Was the accused working in the kitchen on the 15-16 Mar?
A79. Yes, sir.
Q80. He was one of the cooks, was he?
A80. Yes, sir.
Q81. What time did he come on duty on the 15 Mar?
A81. I would imagine about 5.30 or 6.00 in the morning; well, it would be about 5.30, I would say.
Q82. Did the accused have access to the store room in which the foodstuffs were kept?
A82. Yes, sir.
Q83. Did you see the accused on the morning of the 15 Mar?
A83. Yes, sir.
Q84. Was he at that time drunk?
A84. No sir, I wouldn't say that he was drunk, but he had been drinking the night before.
Q85. But he was not drunk the next morning?
A85. I wouldn't say so, sir.

CROSS EXAMINATION BY THE DEFENDING OFFICER

Q86. What time on the 16 Mar 41 did Mr. Turnbull come and make his inspection when you found these things missing?

THE PROSECUTOR: That was on the 15 Mar, the date of his inspection.

A86. THE WITNESS: About 11 o'clock in the morning.

Q87. BY DEFENDING OFFICER: What time did you come on duty that day?
A87. Around about five in the morning, the same time as the accused.
Q88. How many people work in the kitchen?
A88. There was only Pte Fairthorne and I on duty that day, on the Sunday.
Q89. No - this is the 15th, that was Saturday?
A89. Oh, there would be three on duty that day.
Q90. And all three of you would have equal access to the stores?
A90. Yes, sir.
Q91. Were you on duty the following day, that is Sunday?
A91. Yes, sir.
Q92. Were you and the accused drinking together in the kitchen on the following morning, Sunday morning?
A92. Not at that time.
Q93. But you were drinking during the course of your duty the following morning?

THE PROSECUTOR: Sir, I suppose anything any evidence this witness gives in evidence will not be held against him; I submit he should have the protection of the Court.

JUDGE ADVOCATE: What is your authority for that in military law? Can a witness have the protection of a Court Martial?

THE PROSECUTOR: I believe so, sir.

DEFENDING OFFICER: Yes, I think that is right, sir; I think it is in the M.M.L.

JUDGE ADVOCATE: The Court will consider that later.

The Court is closed for consideration.

The Court is re-opened, and the same witness is recalled.

THE COURT: Pte. Stewart, it is not necessary that you answer all questions put to you. If you think in answering some questions you think you are liable to incriminate yourself or are liable to be charged under the Army Act you are not bound to answer such questions. Therefore consider the question which is asked and if you are not certain whether you want to incriminate yourself or not then ask for the protection of the Court. The shorthand writer will read to you the last question.

The shorthand writer reads Q.93.

Q94. BY JUDGE ADVOCATE: Now, will you answer that question or not?
A94. I prefer not to, sir.

Q95. BY DEFENDING OFFICER: You have stated that the accused came to work on the morning of the 15th, and I think you said he had been drinking the night before; is that correct?
A95. Yes, sir.
Q96. Was he drunk at that time?
A96. I wouldn't say so.
Q97. How do you distinguish whether a man is drunk or not?

THE PROSECUTOR: Is there any such thing?

DEFENDING OFFICER: He stated the accused was not drunk, and I want to know how he forms that opinion.

THE PROSECUTOR: I submit there is no rule in military law to determine whether a man is drunk or not; it is purely and simply a matter of opinion.

DEFENDING OFFICER: All right, then on what basis does he form his opinion?

JUDGE ADVOCATE: It is the Court you are supposed to be addressing. The Court is good enough to allow me to give my opinions direct to you, but the Court is not obliged to do so, but so far as you gentlemen are concerned you must address the Court directly and not enter into any arguments among yourselves.

THE COURT: I do not think the witness is competent to answer that question.

DEFENDING OFFICER: The witness has made a statement; he evidently considers himself competent to express an opinion as to whether a man is drunk or not and he says in his opinion this man was not drunk.

JUDGE ADVOCATE: Frankly I cannot see what the defence is pressing that point for. I cannot see what the defence can get out of that.

DEFENDING OFFICER: Very well.

JUDGE ADVOCATE: On the other hand, if you think it is going to help, well all right.

DEFENDING OFFICER: He made a statement and it is the duty and right of the defence to endeavour to find out why these people make these statements.

JUDGE ADVOCATE: Why don't you ask the witness does he know if the accused had been drinking?
BY DEFENDING OFFICER:-
Q98. Do you know whether the accused had been drinking or not?
A98. Not that I saw.
Q99. Was there any evidence of liquor on his breath or in his actions?
A99. No sir, but there was a "hangover" from the night before.

Q100. Do you know how many hams there were in the larder on 15 Mar 41?
A100. I believe there were two hams, sir.
Q101. And how many were there the following day or later on in the day when Mr. Turnbull made his inspection?
A101. Then he was back again Sunday night.
Q102. How many were there then?
A102. When I got there, only one.
Q103. So there is an intervening space, a period of time from Saturday morning when there were two hams until Sunday night when there was one; now is that correct?
A103. Yes, sir.
Q104. And during that period how many people would have access to the food stores?
A104. There would be three on duty that day and the night man of course would be on duty that night.
Q105. Who was on duty the following day?
A105. Fairthorne and I.
Q106. In other words, a total of four different people altogether?
A106. Yes, sir.
Q107. Would it have been possible for any unauthorised persons other than the kitchen staff to obtain access to the meat stores?
A107. Well, the kitchen fatigue could get in.
Q108. How many men does that consist of?
A108. Eight, I believe.
Q109. Do you mean eight different men each day?
A109. No, eight men for the week, the eight men are all on for all the week.
Q110. So that means twelve men could have had access to the meat stores?
A110. Yes, sir.

RE EXAMINATION BY THE PROSECUTOR

Q111. Was the meat store usually locked?
A111. For a certain part of the time.
Q112. And where were the keys kept?
A112. Hung up by the oven.

RE CROSS EXAMINATION BY THE DEFENDING OFFICER

Q113. Could anybody have taken those keys and gone and opened the meat stores?
A113. They could have done but more than likely they would have been observed by either one of us in the kitchen.

At 1300 hrs the Court adjourn until 1430 hrs on the same date.

6th witness for prosecution) J.W.C. CARPENTER (a civilian), being duly sworn, is examined by the prosecutor:-

Q114. Mr. Carpenter, what is your occupation?
A114. Boiler room attendant, Regimental kitchen, No. 1 M.T.V.R.D.
Q115. Do you recognise Pte. Fairthorne, the accused?
A115. Yes sir, he is one of the cooks at the M.T.V.R.D.
Q116. As you know, Pte Fairthorne is accused of stealing certain foodstuffs. Could you tell the Court in your own words what you know of this case?
A116. On the date in question, which was the 16 Mar, I went into the cookhouse about 6.00 a.m. and had a conversation with the accused man, and during the course of the conversation he asked me if I would hide a ham for him until he went home on leave, and I said I could not hide it but he could leave it there, but I told him he would be entirely responsible for it. I told Mr. Courtnedge about it when he came on, and about 5.00 a.m. the next morning I looked and the ham was gone.
Q117. You say the accused asked you if he could hide the ham; where did you think he intended to hide it?
A117. I took him to mean in the stoke hole underneath the kitchen.
Q118. Did you see the ham in the actual possession of the accused?
A118. He brought it straight down the steps; I saw him carrying it down the steps, sir.
Q119. Was this article wrapped up in anything?
A119. Yes sir, in a piece of sack, that was the outer covering, and it looked like a cook's apron or something underneath the sack.

Q120. Did the accused say what he intended to do with it?
A120. He said he was going to take it home when he went home, but I don't know when that was to be.
Q121. Have you any idea how much this ham weighed?
A121. Roughly I guess about 14 lbs.
Q122. Did you actually see that it was a ham?
A122. I didn't have the covering off but I could see it was a ham, yes.

CROSS EXAMINATION BY THE DEFENDING OFFICER

Q123. What time of the day did the accused ask you if you could hide the ham for him?
A123. Six a.m.
Q124. What time did you come on duty?
A124. Four o'clock.
Q125. Do you know what time the accused comes on duty?
A125. Sometimes they are already there when I get there, it just depends.
Q126. Now then, this package which you saw the accused bring down to your quarters, how could you tell it was a ham if it was wrapped up?
A126. I didn't know, only I looked at it afterwards.
Q127. Did you see where he placed it?
A127. In behind a partition.
Q128 Did you actually see him go in there?
A128. Yes, sir.
Q129. Did you go in yourself to look at it?
A129. Yes.
Q130. And when you went in to look at it, what did you do with it?
A130. I just left it there. I took the covering off, like you will if you are a bit inquisitive, and then left it there again, but I didn't take it right out.
Q131. Have you any idea, or had you any idea at thetime, where this alleged ham came from?
A131. I presume it came from the cookhouse, but he may have bought it for all I know.
Q132. You could not see whether it was Government property or not?
A132. No, sir.
Q133. When did you go off duty on the 16 Mar 41?
A133. Mid-day.
Q134. Who relieved you then?
A134. Mr . Courtnedge.
Q135. Was the ham there when you were relieved?
A135. Yes sir, I am certain since a recent conversation.
Q136. Do you know what finally happened to the ham?
A136. No sir, the accused asked me the next morning for it as he said he was going to put it back, and I told him it was gone.

RE EXAMINED BY THE PROSECUTOR

Q137. Where did you first see the accused with the ham in his hand?
A137. Half way down the stoke hold steps, sir.

Q138. BY THE COURT: You say the accused came the following morning and asked you for the ham, saying he was going to put it back?
A138. Yes, sir.
Q139. Back where?
A139. I don't know, sir.

Q140. BY JUDGE ADVOCATE: What were the accused's words?
A140. He said, "Is the ham still there?" and I said, "No." He said, "Oh, I was going to put it back," but where he was going to put it back I don't know.

7th witness for prosecution) ERNEST COURTNEDGE (a civilian), being duly sworn, is examined by the prosecutor:-

Q141. Mr. Courtnedge, what are your duties?
A141. I am boiler room attendant, Regimental Mess, 1 M.T.V.R.D.
Q142. Do you recognise Pte Fairthorne, the accused?
A142. Yes sir, he is a cook on the kitchen staff, sir.

Q143. Tell the Court what you know about the charge against the accused?
A143. All I know, sir, is on Sunday, 16 Mar when I took over my duty off Mr. Carpenter he said to me, "There is a ham behind the wall there." When he was gone I looked and saw it was there all right.
Q144. Was it wrapped up?
A144. Yes, in white muslin and a piece of sacking I think as well.
Q145. What time did you go off duty that day?
A145. I think about 7.30, somewhere around there, about that as near as I can say.
Q146. That is on the 16th?
A146. Yes sir, on the 16th.
Q147. Did you see the ham in the boiler house when you left?
A147. Yes sir, it was still there when I left.

CROSS EXAMINED BY THE DEFENDING OFFICER

Q148. Did you see this ham in the possession of the accused at any time?
A148. No, sir.
Q149. Had you any idea who it belonged to?
A149. No, sir; well yes, I did, I just told you what Carpenter told me.
Q150. But you had no personal knowledge as to whose it was or who had put it there?
A150. No.

The prosecution is closed.

Q151. BY THE COURT: Do you apply to give evidence yourself as a witness?
A151. No, sir.
Q152. Do you intend to call any other witness in your defence?
A152. No, sir.

DEFENDING OFFICER: We have no witnesses as to facts, and as far as character is concerned the accused himself will give evidence later on that point, as to his previous service, etc., but no evidence as to character is available.

JUDGE ADVOCATE: Then if I understand it, the accused will not give evidence on oath but make a statement, and will call no witnesses either as to facts or as to character?

DEFENDING OFFICER: That is right, sir.

R.P. 40 and 41 complied with by the Court.

DEFENDING OFFICER: Sir, the accused would like to make a statement, not on oath.

The Accused, No. B-81561, PTE. M. FAIRTHORNE, No. 1 M.T.V.R.D., NOT being sworn, states:-

On Sunday, 16 Mar 41 I went to get a sack to lift some things out of the oven. I went into the vegetable room and there was this ham wrapped up. I took it down to the boiler room and asked the stoker if he would mind it for me until tomorrow. He said he would. The next day, the next morning, I had been drinking on the Sunday but on the Monday I went down to get the ham to bring it back [redacted] where I had got it from. When I got there the ham was gone. I didn't know who had it. That is all I have to say, sir, in regard to the ham. In regard to the loaf of bread, I asked for it and it was given to me and I brought it back, took a slice off it and went to the kitchen, and when I came back I put the loaf in my locker, where it was found. I could not identify the man who gave it to me because it was only a matter of a couple of minutes and this was two days after when I was taken back to identify him and I couldn't identify him. I had been drinking heavily the night before and my reason for doing that was that I had lost my wife twelve months to the day, since I was here, and I have no mail or anything. I was overseas in the last war and this is the first time I have been crimed like this. I have a good character, and that is all I have to say.

CLOSING ADDRESS OF THE PROSECUTOR

Gentlemen:-

I think the prosecution has definitely shown that the first article, namely the loaf of bread, could not have been obtained anywhere but from the stores on the morning of 16 May 41. The accused could not identify the person who gave him this loaf of bread, as he alleges, and I submit there is positive proof of stealing in that particular instance.

In connection with the alleged theft of the ham, I don't think there is any shadow of doubt but that this is a straight case of stealing. I would refer you to p.116, M.M.L., sec 50, which says:-

> "A person steals who, without the consent of the owner, fraudulently and without a claim of right made in good faith, 'takes' and 'carries away' anything 'capable of being stolen' with intent, at the time of such taking, permanently to deprive the owner thereof."

In this case I think it is very conclusively proven that the ham was taken by the accused. It is proven beyond any doubt by numerous witnesses. The mere fact that the accused had a change of heart the next day and wished to return the ham does not absolve him from a charge of stealing.

I submit it is very conclusively proven that the accused man carried away this ham with the intent of depriving the owner thereof.

I would ask the court to bear in mind the fact that the question of foodstuffs in the army, and throughout the country generally, is today a very serious one, and I would submit that if the court find the accused did in fact steal these articles, then an example should be made in this particular case.

CLOSING ADDRESS OF THE DEFENDING OFFICER

I would like to submit on behalf of the accused, dealing first with the loaf of bread, the evidence of the prosecution's witnesses in which they state that they identify the bread by reason of the fact it had a "D" stamped on top of the loaf - I would point out to the Court that there are a number of marks here, but I would hesitate to call them a "D" or anything else; it is a semi-circular sort of thing, with no real shape of the letter "D". These marks also could have been put on there at any time and they could mean anything. The accused has stated that the loaf of bread was given to him. There were three men in thebakery, according to the prosecution's evidence, and it is not at all beyond the realms of possibility that any of them could have given him the loaf of bread. The Sergeant who gave evidence stated they didn't, but he was not there at the time, as far as I know, and it is not at all unusual for men in the army, even though they are in a position of some trust in regard to stores, to slip a loaf of bread or some other articles to one of their comrades who asks for it. There is absolutely no evidence before the Court that that bread was actually stolen from the Fd Bakery other than there is supposed to be the letter "D" on it. There is no evidence, for example, that they baked 1,000 loaves of bread and on a check being made only found 999. That loaf of bread could have come from some other place other than the Fd Bakery, and I submit that the prosecution has by no means proved that the loaf of bread which is an exhibit in Court today was stolen by the accused or that he was in improper possession of it.

Dealing now with the question in connection with the ham, the evidence of the prosecution shows that a ham was missing a way back in the month of March. Everybody seems to remember this very well. The further evidence is that the accused is supposed to have put a ham in the boiler room for safekeeping. The ham, gentlemen, has not been produced in evidence; there is no evidence whatever to show that the ham which the accused is alleged to have had in his possession was Government property, which after all is what he is charged with. There has been no evidence

Memo:

J.A's summing up is correct in law as far as it goes. To failure to point out the alternative open to the court under RA sec 5 (1) does not prejudice the accused.

22/8/41

J.A.G's Rep ch

I do not agree
25 Aug 41
J.R.A. Bevillac
Lieut.

on that point whatever. The only person who saw this ham was Mr. Carpenter, and he stated it was wrapped up and he merely pulled aside the corner of the wrapping and saw that it was a ham. The accused has stated that the ham was found in the vegetable room. The prosecution has stated that the last time it was seen was in the meat stores. There we have two different places. The accused stated - and this was substantiated by one of the witnesses - that he intended to return the ham, but in the meantime the ham was taken by a person or persons unknown.

It is submitted that when a man is charged with stealing, the property, that is the subject of the theft, should be identified and produced in Court. Further, this accused man is charged with stealing public property and there has been no evidence whatsoever to show that this ham was public property. I would draw the Court's attention to note 10 of sec 18, A.A., on p.444 of the M.M.L. which says:-

> "If it turns out that the property belongs to some person or persons not included in the category contained in this paragraph, the accused must be acquitted, as the offence could in that case only have been charged under s.41."

There has been no evidence that this ham was public property, as I said, or that it was the property of any institutions or persons referred to in sub-sec 4, and for that reason I submit that the charge should be dismissed and the accused acquitted.

SUMMING UP

The Judge Advocate makes the following summing up:-

The Judge Advocate, when present in Court, is there not to advise the Court on the facts but to advise the Court on the law. It is entirely up to the Court to judge the facts.

The only comment I wish to make is that in this case the evidence is circumstantial. Now, circumstantial evidence can be good evidence, just as well as direct evidence. There must be no doubt, however, in the minds of the Court as to the guilt of the accused. If there is any reasonable doubt it should be in favour of the accused.

There are four charges against the accused, two of which are charges of theft of public property. If the Court find the accused guilty they have the choice of finding him guilty either of theft in accordance with the charge as laid, or with improper possession or conduct to the prejudice under A.A. sec 40, which is the alternative charge. The Court could not find the accused guilty of receiving because the provisions of A.A. sec 56 does not allow it to do so.

THE COURT IS CLOSED FOR THE CONSIDERATION OF THE FINDING.

The Court being re-opened, the accused is again brought before it.

LIEUT. R. ERSKINE, No. 1 M.T.V.R.D., is duly sworn.

Q153. Have you any evidence to produce as to the character and particulars of service of the accused?
A153. Yes, sir, AF B296 and certified true copy of MFM-6.
Q154. Is the accused the person named in the statement which you have heard read?
A154. Yes, sir.
Q155. Have you compared the contents of the above statement with the regimental books?
A155. I have, sir.
Q156. Are they true extracts from the regimental books, and is the statement of entries in the conduct sheets a fair and true summary of those entries?
A156. Yes, sir.

The defending officer declines to cross-examine this witness.

Q157. BY THE COURT: Do you wish to address the Court?
A157. THE ACCUSED: Yes sir:-

I am No. B-81561, Pte. M. Fairthorne, No. 1 M.T.V.R.D., R.C.A.S.C. I would like to tell you as regards my service. I joined the army in 1914 and was discharged in 1919. I was wounded in 1915 and sent back to Canada and was discharged on 15 Jul 16, with good character and good conduct and everything. I joined again on 29 Sep 16 and went right through to 1919, and was discharged then with an honourable discharge. I joined up again on 5 Sep 39 and have had one crime in all that time right up until this time, sir. That is all I want to say.

Q158. You want the Court to take into consideration your previous service in mitigation of sentence?
A158. Yes, sir.

THE COURT IS CLOSED FOR THE CONSIDERATION OF THE SENTENCE.

D. Ross Major
4 Aug 1941

Summary of Evidence in the case of B - 81561 Pte. Fairthorne, M., F I M.T.V.R.D., R.C.A.S.C., C.A.(O.S.)

By direction of the Officer Commanding, t he Summary of Evidence is taken on Oath.

FIRST WITNESS

#103264 S/Sgt. Murie, R. C., 23rd Field Bakery, R.A.S.C., Louisburg Barracks West, Bordon, Hants., having been duly sworn, gives evidence as follows:

Q. 1 Are you a member of the 23rd Field Bakery, R.A.S.C., Louisburg Barracks West?

A. Yes, sir.

Q. 2 Are you acquainted with the Accused?

A. No, sir.

Q. 3 I now produce to you a loaf of bread -- can you identify that loaf?

A. Yes, sir.

Q. 4 Is it a loaf produced by the Unit to which you belong?

A. Yes, sir.

Q. 5 I believe your unit bakes all the bread used within this camp?

A. Yes, sir.

Q. 6 What are your duties?

A. Oven foreman, sir.

Q. 7 Do you recognize this loaf of bread as being one produced by the 23rd Field Bakery?

A. Yes, sir.

Q. 8 How do you identify it as such?

A. It is a loaf baked by us on 16 May 41. The loaf is marked with a letter "D" on the top of the loaf.

Q. 9 Is that letter placed on the bread before or after it is baked?

A. Before it is baked.

Q.10 What instrument is used to mark it?

A. A docker, sir.

Q.11 What does the letter "D" signify?

A. The date the bread was made on.

Q.12 Does each and every loaf produced in your ovens bear a letter?

A. Yes, sir.

Q.13 That is, according to a code?

A. Yes, sir.

First Witness, Cont'd

Q.14 And the letter "D" indicates to you that this loaf was produced in your ovens on 16 May 41?

A. Yes, sir.

Q.15 At what time would that loaf be taken from the oven?

A. At about 0645, sir.

Q.16 Then where does it go?

A. To the bread stores.

Q.17 Where are those stores located?

A. Fifty yards from the bakery.

Q.18 I believe theyface unto the Martinique road?

A. Yes, sir.

Q.19 Would anyone going along the roadway have access to the bread stores?

A. Yes, sir, at that time of the morning.

Q.20 So that it is possible for anyone who wished to go in and help themselves to a loaf of bread, to do so?

A. Anyone could go in and steal a loaf of bread.

Q.21 The bread produced on that morning on which this loaf was baked -- would it be issued on 16 May 41?

A. Definitely not, sir. It would be issued on 17 May 41.

Q.22 Would it be possible for anyone to obtain a loaf on the morning of 16 May 41 from any source other than your bakery stores?

A. No, sir.

...R...G...Muri...S/Sgt.....
#10320 S/Sgt. Muri, R. G.

ACCUSED DECLINED TO CROSS-EXAMINE

FIRST WITNESS RECALLED

#103264 S/Sgt. Murie, R. G., 23rd Field Bakery, R.A.S.C., having been duly sworn, continues his evidence as follows:

Q.23 On the morning of 16 May 41, when Pte. Fairthorne appeared before the Officer Commanding to answer to charges preferred against him, were you present?

A. Yes, sir.

Q.24 Did you hear Pte. Fairthorne make the statement that he had got this loaf of bread from your stores and that it had been given to him by a member of your staff whom he could not name, but whom he would be able to identify?

A. Yes, sir.

Q.25 And the Officer Commanding then adjourned the case and ordered that he be escorted to the bakery stores for identification?

A. Yes, sir.

Q.26 Were you present at the identification parade?

A. Yes, sir.

Q.27 Do you know what members of the staff of the Field Bakery were paraded?

A. Yes, sir, a Lance-Corporal and four privates who were issuers.

Q.28 Is that the entire staff?

A. Yes, sir.

Q.29 Would that be the staff on duty on the morning of 16 May 41?

A. Yes, sir.

Q.30 On the morning of 16 May 41, between the time the bread came out of the ovens and the time Pte. Fairbhorne came to identify a member of your staff, were there any changes of staff?

A. No, sir.

Q.31 Did Pte. Fairthorne make any comment?

A. He failed to identify any man. He suggested it might be someone who was not there. I gave him the opportunity of having a full parade, but he said no, that is was an issuer from the bread stores. Yet he could not identify the man.

R. G. Murie S/Sgt.
#103264 S/Sgt. Murie, R. G.

ACCUSED DECLINED TO CROSS-EXAMINE

SECOND WITNESS

D-91997 a/Sgt. Terhune, M. J., No. 1, M.T.V.R.D.,R.C.A.S.C., C.A.(Overseas), Louisburg Barracks West, Bordon, Hants., having been duly sworn, testifies as follows:

Q. 1 You are a member of No.1, M.T.V.R.D., Louisburg Barracks, West, Bordon?

A. Yes, sir.

Q..2 I produce to you a loaf of bread, do you recognize it?

A. Yes, sir.

Q. 3 In your own words, tell what you know of this loaf of bread.

A. On the morning of 16 May 41, I was ordered by Capt. S. A. German to take the loaf of bread in question and find, if possible, its origin. I proceeded to 23rd Field Bakery, R.A.S.C., near the spider hutments, Louisburg Barracks West, Bordon, Hants. There the bread was identified as the property of that bakery, but the initial "D" on top of the loaf. Further proof was shown me by a book in the bakery, stating what the initials were for.

Q. 4 What is the initial on this loaf?

A. "D", Sir.

Q. 5 On the morning of 17 May 41, were you present at the office of the Officer Commanding when the Accused was paraded to answer charges, at which time the Accused stated that the loaf of bread had been given to him by a member of the staff of 23rd Field Bakery, R.A.S.C.?

A. Yes, sir.

Q. 6 He was then, on instructions of the Officer Commanding, escorted to the Issue Stores of the 23rd Field Bakery and given the opportunity to identify the person whom he alleged had given him this loaf of bread?

A. Yes, sir.

Q. 7 Was the Accused able to identify anyone?

A. No, sir.

Q. 8 Did he make any statement at that time?

A. Only that the man who gave him the loaf was not present, and that he had worn a brown or khaki uniform.

Q. 9 Did he make any request for any further opportunity to identify anyone?

A. He was asked if he wanted them all paraded and he said he was satisfied.

M J Terhune
.....
D-91997 a/Sgt. Terhune, M. J.

ACCUSED DECLINED TO CROSS-EXAMINE

THIRD WITNESS

D-91995 a/Sgt. McDonald, J. A., No. 1, M.T.V.R.D., R.C.A.S.C., C.A.(O, Louisburg Barracks, Bordon, Hants., having been duly sworn, testifies as follows:

Q. 1 You are a member of No. 1, M.T.V.R.D., R.C.A.S.C.?

A. Yes, sir.

Q. 2 I produce to you a loaf of bread -- have you seen it before?

A. I believe it is the loaf of bread found in Pte. Fairthorne's locker.

Q. 3 Will you tell us what you know concerning it?

A. On 16 May 41, 0930 hours, as acting C.S.M. I accompanied a member of the Regimental Police in searching a locker. During the search the loaf of bread was found in the locker of Pte. Fairthorne, whom I placed under close arrest.

Q. 4 The loaf was removed from Pte. Fairthorne's locker?

A. The Corporal of the Regimental Police memoved it, in my presence.

Sgt. J. A. McDonald
D-91995 a/Sgt. McDonald, J. A.

ACCUSED DECLINES TO CROSS-EXAMINE

FOURTH WITNESS

B-81509 a/Cpl. Cade, T., No. 1, M.T.V.R.D., R.C.A.S.C., C.A.(Overseas) Louisburg Barracks West, Bordon, Hants., having been duly sworn, testifies as follows:

Q. 1 Are you a member of No.1 M.T.V.R.D., R.C.A.S.C., and N.C.O. i/c Unit Regimental Police?

A. Yes, sir.

Q. 2 I produce a loaf of bread to you, do you recognise it?

A. I do, sir.

Q. 3 Will you tell the Court what you know concerning it?

A. On Friday, 16 May 41, I was called to go with Capt. S. A. Germand and Sgt. J. A. McDonald, a/C.S.M., into "E" Block and on going in I was asked to search Pte. Fairthorne's locker. I found a loaf of bread on the top shelf of his locker. I proceeded to search his equipment and found

Fourth Witness -- Continued

nothing else but this loaf of bread. I was instructed to take the loaf of bread, which I did.

Q. 4 How do you identify this loaf of bread?

A. By the slice of bread cut off and the button on it. The bread was fresh and the butter melted into it.

Q. 5 Were you in attendance when Pte. Fairthorne appeared before the Officer Commanding this Unit to answer charged preferred against him?

A. I was.

Q. 6. Did he, at that time, make a statement to the effect that the loaf of bread was given to him by a member of the staff of the Field Bakery, and state that he could identify the man?

A. Yes, sir.

Q. 7 The Officer Commanding then adjourned the case and ordered him escorted to the Field Bakery to make the identification?

A. He did, sir. I escorted him there.

Q. 8 Was S/Sgt. Murie there at the time?

A. Yes, sir.

Q. 9 Was the staff assembled?

A. Yes, sir.

Q.10 Did the Accused identify anyone?

A. He did not.

Q.11 Did the Accused make any request for further opportunity for identification?

A. No. sir. He said he was perfectly satisfied that they were not the men.

B-81509 A/Cpl. Cade, T.

ACCUSED DECLINES TO CROSS/EXAMINE

FIFTH WITNESS

B-81501 C.S.M. Hutchison, T., No. 1, M.T.V.R.D., R.C.A.S.C. C.A.(Overseas), Louisburg Barracks West, Bordon, Hants., having been duly sworn, testifies as follows:

Q. 1 You are Company Sergeant Major of No.1 MT.V.R.D.,R.C.A.S.C.?

A. Yes, sir.

Q. 2 On the morning of 19 May 41 did you cause the Accused to be paraded before to Officer Commanding concerning certain charges?

A. Yes, sir.

Q. 3 What transpired at that time?

A. On the morning in question, during O.C's Orderly Room, I was ordered by the O.C. to have Pte. Fairthorne paraded to the 23rd Field Bakery,R.A.S.C., for an identification parade of the men in the Bread Issue Stores of the said Bakery. Pte. Fairthorne was escorted there and the men of the Issue Stores paraded in front of him. Pte. Fairthorne failed to identify any man in the Issue Stores. On being asked by me if he was satisfied with the identification parade or if he wanted the whole company paraded, he told me he was quite satisfied.

Q. 4 What was the reason for the Officer Commanding ordering this identification parade?

A. Pte. Fairthorne had claimed that he had been given the loaf of bread by a man in the Issue Stores.

T. Hutchison CSM

.....

B-81501 C.S.M. Hutchison, T.

ACCUSED DECLINES TO CROSS EXAMINE

SIXTH WITNESS — Statement of Lieut. D. W. Turnbull, a/Quartermaster, No. 1, M.T.V.R.D., R.C.A.S.C., C.A.(Overseas), Louisburg Barracks, West, having been duly sworn, testifies as follows:

Q. 1 Tell us what you know about this case.

A. On the morning of 15 Mar 41, while with the Officer Commanding, on Saturday morning inspection, we inspected the cookhouse, at which time the meat store was open. I noticed a side of bacon and one ham on top of the bacon, in the cookhouse. There were other hams, to which I paid no attention, but I noticed this one on top of the bacon. Later, on the night of 16 Mar 41, Pte. Fairthorne approached me at the Officer's Mess, hinting that somebody had stolen the ham or the bacon from the cookhouse. He made certain hints as to who should be watched, and as a result of conversation with him, I proceeded to the cookhouse and investigated.

On arrival there, at 2000 hours, the cookhouse was locked, a few minutes later, Pte. Auger, the night cook, (A) up the meat store and there was no bacon and no ham there. I questioned the N.CO. i/c Kitchen on his arrival, and reported the matter to the Commanding Officer. The bacon and the ham were definitely gone and in my investigation I found that neither ham nor bacon had been used between the 15th and 16th of March, 1941.

(A) arrived, and I entered with him.

.....D.W.Turnbull.....
Lieut. D. W. Turnbull, a/Quartermaster

ACCUSED DECLINED TO CROSS-EXAMINE

SEVENTH WITNESS — B-82829 Pte. Stewart, G. A., No. 1, M.T.V.R.D., R.C.A.S.C., C.A.(Overseas), Louisburg Barracks West, Bordon, Hants., having been duly sworn, testifies as follows:

Q. 1 You are a member of No.1 M.T.V.R.D., R.C.A.S.C., C.A.(O)?

A. Yes, sir.

Q. 2 On 16 Mar 41, you were N.C.O. i/c Regimental Cookhouse, located in Louisburg Barracks West, Bordon?

A. Yes, sir.

Q. 3 There are located at one end of the kitchen, two store rooms?

A. Yes, sir.

Q. 4 What is stored in these rooms?

A. Groceries are stored in the one to the right, and meat and milk and cooked stuff left over from previous meals are kept in the one to the left.

Seventh Witness -- Continued

Q. 5 Do you recall Sunday, 16 Mar 41?

A. Yes, sir.

Q. 6 Was there any stuff missing from either of these rooms that day?

A. Between Saturday and Sunday night there was a ham, a piece of bacon and a case of strawberries which disappeared.

Q. 7 Would it be a whole ham or a piece of a ham?

A. It would be a whole ham.

Q. 8 Of approximately what weight?

A. I would say about 12 to 15 pounds.

Q. 9 Was Pte. Fairthorne employed in the cookhouse at that time?

A. Yes, sir.

Q. 10 Was he then working on the day or the night shift?

A. On the day shift. He and I were there that day.

Q. 11 At what time did he commence work?

A. I would imagine it would be about 0530 hours.

Q. 12 While employed in the kitchen did he have access to the store rooms?

A. Yes, sir.

Q. 13 And likewise others in the kitchen?

A. All the regular staff.

Q. 14 Have you, of your own knowledge, any idea where or how this merchandise disappeared?

A. No, sir.

Q. 15 With reference to the case of strawberries, these were tinned fruits?

A. Tinned -- there were twenty-four Size #2 tins to a case.

Q. 16 Was it a full case?

A. A full case.

Q. 17 Have you any idea of the amount of bacon that was missing?

A. No, it was a piece about five pounds of side bacon.

Q. 18 What would be the approximate length of a piece of bacon like that?

A. I would say, about 18 to 20 inches.

Pte Stewart G.A.
.....
B-82629 Pte. Stewart, G. A.

ACCUSED DECLINES TO CROSS/EXAMINE

EIGHTH WITNESS

Mr. Carpenter, Jack William Charles, boiler room attendant, Regimental Mess Hall, No. 1, M.T.V.R.D., R.C.A.S.C., C.A.(O), Louisburg Barracks West, Bordon, Hants., having been duly sworn, gives evidence as follows:

Q. 1 You are employed as boiler room attendant in the Regimental Mess Hall, No. 1 M.T.V.R.D., Louisburg Barracks West?

A. Yes, sir.

Q. 2 Do you recognize the Accused?

A. Yes, sir.

Q. 3 Was he for a time employed in the Regimental Mess of No.1 M.T.V.R.D., R.C.A.S.C.?

A. Yes, sir. I recognize him as one of the cooks.

Q. 4 Do you recall 16 Mar 41?

A. Yes, sir. I was in the Mess kitchen, talking, about six a.m. The Accused asked me if I could hide this ham for him. I said no, I could not do it, and if he brought it down to the boiler room he would be solely responsible for it. I said take the ham back, in other words. He brought the ham down and put it behind a recess in the wall. I looked at it to make sure what it was, and when Mr. Courtnedge came on duty at mid-day, I told him the ham was there. On coming to work the next morning at 4 a.m. -- it would be about 5 a.m. when I looked -- the ham was gone. There was no key to the stokehold and therefore it could not be locked.

Q. 5 When you said you brought the ham down to the boiler room, where do you mean?

A. Down to the stokehold.

Q. 6 You said you looked at the parcel?

A. Yes, sir.

Q. 7 What did you find?

A. I found a covering of sacking, a white apron and a ham.

Q. 8 A whole ham?

A. Yes, sir.

Q. 9 Could you give the approximate weight of the ham?

A. I'm not a good judge, but from the size I would say it was about 14 pounds.

Q.10 Did the accused give you any indication as to how he was going to dispose of the ham?

A. He said he would take it home when he went on leave.

Q. 11 Where did he mean by home?

A. I don't know.

Eighth Witnesse-- Continued

CROSS-EXAMINATION BY B-81561 Pte Fairthorne, M. (Accused)

Q. 1 On the next morning, did I not come and ask you where the ham was?

A. Yes.

Q. 2 I came down and said I had had a drop of drink, and to give me the ham and I would put it back where I got it from?

A. Yes. I said it was gone.

J. W. C. Carpenter
Jack William Charles Carpenter

NINTH WITNESS

Mr. Courtnedge, Ernest, boiler room attendant, Regimental Mess, No. 1 M.T.V.R.D., R.C.A.S.C., C.A.(O), Louisburg Barracks West, Bordon, Hants., being duly sworn, gives evidence as follows:

Q. 1 Your are employed as boiler room attendant at Unit Mess Hall, Louisburg Barracks West, Bordon, Hants?

A. Yes, sir.

Q. 2 Do you recognize Pte. Fairthorne?

A. Yes, I know him as "Major".

Q. 3 Do you recall Sunday, 16 Mar 41?

A. Yes, sir.

Q. 4 Tell us what you know.

A. On 16 Mar 41 I took over at mid-day from Mr. Carpenter, and he told me as he was leaving that there was a ham in the boiler house. I investigated and saw the ham. When I left at 7:20 it was still there. I had been just around the far corner in the brick wall in the boiler room. It was wrapped up in a white piece of muslin stuff of some description. I did not unwrap it.

Q. 5. Did you lift it?

A. Yes, sir.

Q. 6 What weight would you say it was?

A. About ten or twelve pounds.

Q. 7 Did you see Pte. Fairthorne on that day?

A. Yes, in the afternoon.

Ninth Witness, Continued

Q. 8 Did you have any conversation concerning the ham?

A. No, sir.

Q. 9 Was it there when you went off duty in the evening?

A. Yes, sir, at 7:20.

Q.10 Did you see it again?

A. No, sir. I took over at mid-day the next day and it was gone then.

E. Courtnedge
.....
Ernest Courtnedge

ACCUSED DECLINES TO CROSS-EXAMINE

The Accused having been duly cautioned in accordance with Rule of Procedure 4 (E), elects to give evidence on oath.

B-81561 Pte. Fairthorne, M., No.1 M.T.V.R.D., R.C.A.S.C., C.A.(Overseas), Louisburg Barracks West, Bordon, Hants., having been duly sworn, states as follows:

"I want to say that on 16 Mar 41, the ham was in the vegetable room. I did not take it from the meat stores. It was wrapped up in the vegetable room. I found it there when I went to get an empty sack to take things out of the oven, and I took the ham in to the boiler room and asked the fireman, Mr. Carpenter, to keep it for me. The next morning I went down to the boiler room and asked Mr. Carpenter for the ham, as I intended putting it back in the same place as I found it, in the vegetable room."

M. Fairthorne
.....
B-81561 Pte. Fairthorne, M.

CERTIFIED that Rules of Procedure 4(C), (D), (E), & (G) have been complied with.

Taken down by me in the prseence and hearing of the Accused this Nineteenth Day of May, 1941, at Louisburg Barracks West, Bordon, Hants.

.....Capt.,
(S. A. German)
Officer Taking Summary of Evidence

No. B81561 Name Fairthorne, M. Sqn., Battery, or Company 1 Corps # 1 M.T.V.R.D. R.C.A.S.C. C.A. (O.S.) Date of enlistment 6 Sep. 39 G.C. Badges Service or Proficiency Pay

Date of last entry in Company Conduct Sheet No. and date of last drunk 3 Oct. 39 Period not reckoning towards freedom from extra fine Sheet No. 2 Signature O.C. Company, etc. Character

M.F.M. 6 (A.F.B. 122) 50M—11-38 (0) 18-Q. 1772-4

Place	Date of offence	Rank	Cases of drunkenness	OFFENCE	Names of Witnesses	Punishment awarded	Date of award or of order dispensing with trial	By whom awarded	Remarks
				The following entries brought forward from Sheet 1 after six months service					
Toronto Canada	3/10/39	Pte.	1	Drunkennes A.A. Sec. 19	Pte Cooper Dvr. Jiggs	7 days C.B.	4/10/39	Maj. Frawley	
Toronto Canada	9/12 39	Pte.		(1) Insubordination A.A. 8(2) (2) Disobeying an order A.A. 9(2) (3) Using obscene language A.A. 40	Sgt. Skeats Dvr. Latremouille " Petch	168 hrs. detention	11/12/39	Maj. Frawley	

Certified to be a true copy of the Conduct Sheet of B81561 Pte. Fairthorne, M.

Adj't #1 MTVRD. RCASC. C.A. (O.S.)

(P.T.O.)

Army Form B296.

Statement as to Character and Particulars of Service of Accused.

B/61561 Pte. Fairthorne, M. of the 1 M.T.V.R.D., R.C.A.S.C., C.A.(C)

1. The following is a fair and true summary of the entries in the Regimental and Squadron, Battery or Company Conduct sheets† of the accused, exclusive of convictions by a court martial or a civil court, of summary awards under Section 47 of the Army Act, and of cases in which trial has been dispensed with :—

NOTE.—The Regimental and Squadron, Battery or Company Conduct Sheets are to be produced in Court with this statement but are not to be annexed to the proceedings.

†See Para. 604, K.R., 1935.

	*Within last 12 months.	*Since Enlistment.
For DRUNKENNESS A.A. Sec.19 Toronto, Can. 3 Oct 39	times one	times.
For (1) INSUBORDINATION A.A. Sec.(illegible) (2) DISOBEYING AN ORDER A.A. Sec.9(2)	times one	times.
For CONDUCT TO THE PREJUDICE, etc. OBSCENE LANGUAGE A.A. Sec.40	times	times.
For	times	times.

*The numbers herein stated should correspond with the number of *Entries* in the Conduct sheets, precedence being given to the most serious offence in each entry, and to any recognised special acts of gallantry or distinguished conduct.

INSTRUCTION.—If the charge is for drunkenness the entries for drunkenness must be stated separately and dated.

~~Number of instances of gallantry or distinguished conduct.~~

or,

~~There are no entries in the Conduct sheets of the accused.~~

2. ~~The accused has not been previously convicted.~~

or,

Previous convictions† of the accused by a court martial or a civil court, summary awards under Section 47 of the Army Act, and dispensations with trial under Section 73 of the Army Act, are set out in the Schedule annexed to this statement.

Wt. 43844/081 30,000 2/40 W. S. Ltd. 51—4004

30 July 1941

3. ~~The accused is not under sentence at the present time.~~

or,

~~The accused at the present time is under sentence for~~ .....
~~beginning on the~~ ..... ~~day of~~ .....

4. The accused has been in confinement, awaiting trial on the present charges

for NIL days in Civil Custody,

and 75 days in Military Custody.

Total 75 days.

Of which nil days were spent in hospital.

5. The present age of the accused according to his ~~record of service~~ attestation paper is 44

6. The date of his ~~commission~~ attestation specified in his ~~record of service~~ attestation paper is 6 Sep 39

7. The service which the accused is allowed to reckon towards discharge or transfer to the reserve is ———

8. The accused is entitled to deferred pay or gratuity in respect of ——— years' service.

9. The accused is entitled to reckon ——— years' service for the purpose of determining his pension, &c.

10. The accused is in possession of, ~~or entitled to, no military decoration or military reward [or is in possession of or entitled to~~

Mons Star
General Service Medal
Victory Medal]

11. (*~~If the accused is a warrant officer.~~*) ~~The accused before he was made a~~ warrant officer last held the regimental rank of .....

12. (*In the case of an officer.*) The accused holds in the army the rank of ....., and in his regiment (*or* corps *or* department) the rank of ..... dated .....

13. The accused has served as a non-commissioned officer continuously, without reduction, to the present date,

		Date of Promotion.
In the rank of	..... years,	.....
In the rank of	..... years,	.....
In the rank of	..... years,	.....

(INSTRUCTION.—*If any matter in any of the above paragraphs cannot be stated from the regimental books the paragraph must be struck through.*)

The above statement (with the schedule of convictions and of cases in which trial ~~has been dispensed with~~) is read, marked ....., signed by the president, and annexed to the proceedings.

Schedule of Convictions by a Court Martial or Civil Court, of summary awards under Section 47 of the Army Act, and of Cases in which Trial has been dispensed with.

of the .....

Army Number, Rank and Name .....

NOTE.—*A verbatim extract from the regimental books, stating these convictions and dispensations with trial, must be inserted.*

Description of Court by which tried, or status of Officer dispensing of the charge or dispensing with Trial.	Date and place of Trial, or summary award, or of Order dispensing with Trial.	Charges upon which convicted, or in respect of which Trial was dispensed with.	Sentence of the Court or Authority disposing of the charge, or Order of the Dispensing Authority.	Punishment remitted.

(*Continued overleaf.*)

H.Q.C. 55-F-883

CONFIDENTIAL

DEPARTMENT OF NATIONAL DEFENCE—OTTAWA, CANADA

SUBJECT

FIELD GENERAL COURT-MARTIAL

FAIRCHILD, JOHN HARRIS H-4[illegible] [illegible].

CENTRAL REGISTRY	DATE	P.A. OR B.F.	INITIALS	REFERRED TO	FOR	INITIALS	DATE
				(If purpose for which referred cannot be expressed on one line enter here "With Minute")			2-12-46

CONFIDENTIAL
H.Q.C. 55-F-883

OVERSEAS COMBINED

NOTICE

1. Files should be retained no longer than absolutely necessary. If a file is frequently needed at short intervals, it is better to B.F. If for two or three days then from R-out of Central Registry indefinitely. This ensures it being completed and kept in order, and also gives other offices an opportunity to see same.
2. Central Registry should be notified whenever a file is passed direct to another branch.
3. All outgoing correspondence bear the subject file number.

PASS THIS FILE IN ENVELOPE

SCHEDULE.

PART I. PLEA(S), FINDING(S) AND SENTENCE.

Accused: H46022 Pte John Harris FAIRCHILD - 6 CIRU - CIC

Charge. (Insert "alternative" where applicable.)	Plea. (See Instrs p 2.)	Finding. (See note below.)	(Space for use as required for further charges, accused charged jointly, special findings, etc.)
1st AA Sec 15(1)	GUILTY	GUILTY	
2nd			
3rd			
4th			
5th			
6th			

(Note: As to findings for lesser offences see AA 56, RP 44; findings on alternative charges see MML p 483 fn 4 para 2, RP 44; special findings see RP 44 and MML p 753, and in loss of kit see RP 44 fn 6.)

~~At present under sentence for~~ ..... beginning on (date) ..... (1) Waf.

(1. Insert sentence being served, or delete, if not applicable. See RP 46(A). Information should be found on MF B355 or AF B296.)

Time in confinement awaiting present trial—a total of 6 days, of which Nil days were spent in hospital.(1)

(1. See RP 46(A) fn 2. Information should be found on MF B355 or AF B296 admitted in evidence under E2.)

Sentence Awarded by the Court:

To undergo detention for a period of 120 days and.
~~To forfeit 120 days pay under 6AA 104(1)a~~ waf.
To be placed under stoppages of £0-8-0 to cover cost of apprehension waf

(Sgd) ..... 27 Sep 44 (Sgd) W A Freeman Major. waf

Judge-Advocate, if any. Date awarded. President. (RP 45, 50.)

(See back of Convening Order as to assembly and disposal of record after trial.)

PART II. MINUTE WHERE CONFIRMATION RESERVED. (AA 54(5), RP 120(F), MML p 760.)

~~Date ..... (Sgd) ..... Commanding .....~~

PART III. DECISION OF CONFIRMING OFFR ON FINDING(S) AND SENTENCE.

(For duties and powers see AA 54, 57, RP 37(D) fn 6,46(A), 51-56, 120, MML pp 759-761, KR Can 567-577. Acquittals require no confirmation and cannot be revised: AA 54(3). Sending back finding or sentence for revision by Court: AA 54(2), RP 120(G). If not confirmed, accused may be tried again: AA 157, MML p 64. Minute of confirmation or non-confirmation may be altered before promulgation: RP 53, MML p 65. Quashing after promulgation: KR Can 573. Duties and powers of reviewing offrs: AA 57, 57A, RP 53A, 54. The Confirming Offr must sign here personally. AA 172 fn 1.)

My decision on the finding(s) and sentence set forth in Part I is: I confirm the finding but I mitigate the sentence so that it shall read as follows "to forfeit 28 days pay and to be placed under stoppages of pay until he has made good the sum of £0-8-0 being cost of apprehension and I confirm the sentence as so mitigated"

~~I direct that the accused be not committed to prison or detention barracks until further orders.~~(1)

(1. AA 57A. Delete if not used.)

(Sgd) (G S N Gostling) Brig

Date 29 Sep 44 Commanding "A" Gp Cdn Rft Units CAO

Confirming Officer.

PART IV. PROMULGATED AND EXTRACTS TAKEN. (RP 53, KR Can 576, 577.)

Accused. Date. Signature of Offr.

H46022 Pte John Harris FAIRCHILD 6 CIRU - CIC — Do 30 Sep 44 — Do 233/44 — John Bellchambers Capt. CAPT., ADJT., 6 CDN. INF. RFT. UNIT

ALL DELETIONS AND ALTERATIONS WILL BE INITIALLED.

RECEIVED 3 OCT 1944 HQ 8 CDN INF BDE A.M.R.O.

RECORDED AT CMHQ IN AB 160 222-20

CFA96 (To lieu of AFA51) 40/P & S/1698 (40/10) 4/38B

FIELD GENERAL COURT-MARTIAL

Convened by Order of A/Col J GAVAN POWER Comd "A" GP CRU dated 26 SEP 44

ACCUSED.

(As to the trial of two or more charged jointly see RP 16, 71, 109. As to reasons for showing (a) permanent or confirmed rank, and (b) appmt, A/rank or A/appmt, if any, see AA 182, 183, fns, KR Can 308, 328, 330.)

Number.	(a) Prmnt R.	(b) Appmt, A/R or A/Appmt.	Full Christian Names.	Surname.	Unit.
H46022	Pte		John Harris	FAIRCHILD	6 CIRU CIC

PROCEEDINGS REVIEWED
J A Campbell Major
14 Oct 44
REVIEWING OFFICER, JAG BRANCH, C.M.H.Q.

PROCEEDINGS OF TRIAL.

Held in the Fd in (country) England on (date(s)) 27 Sept 44. waf

RECORD FORM A—OPENING PROCEEDINGS AND ARRAIGNMENT.

A1. The President, Members, waiting Member, JA, if any, and Offrs under instr, if any, assemble, and the Court is closed.

(PRINTED MATTER, NOT IN ITALICS FOR GUIDANCE, WILL BE DELETED, IF NOT USED OR APPLICABLE, AND INITIALLED BY PRES OR JA. The Schedule referred to throughout is on p 4. Citations do NOT include all relevant fmn ROs. For guidance on procedure when a variation in this form arises, see form for GCM in MML pp 741 to 759. A brief record of such variation will be made and given a number having reference to appropriate or preceding para number herein. See back of Convening Order, CF A95, for oaths and instrs on how to record addresses, evidence, etc. which instrs are hereafter called "Notes". As to general provisions for conducting the trial see AA 53, RP 56, 63-70, 73, 74, 94, 103, 119, 132.)

A2. The President initials and lays before the Court the Convening Order and Charge Sheet ~~(if)~~ attached thereto.(1) The Court is satisfied that it is properly convened and constituted(2), accused is ~~(are)~~ amenable to military law, and each charge discloses an offence.(3) waf.

(1. As to use of Summary of Evidence see RP 17 fn 6. 2. AA 49, 50, RP 105-107. 3. RP 11-13, 23, 24.)

A3. The Court is opened. The accused is ~~(are)~~ brought before the Court. At 1425 hours trial commences. waf

A4. The Prosecutor produces a Medical Certificate that accused is ~~(are)~~ fit to undergo trial by court-martial.(1) ~~The Prosecutor informs the Court that accused elected to be tried by court-martial instead of being dealt with summarily by the CO.~~(2) waf.

(1. KR Can 557. 2. AA 46(B), RP 60 fn 1. For effect see KR Can 563(c). Delete, if not applicable.)

A5. ~~President to accused: Do you object to ..... as interpreter? Ans .....~~

~~The Interpreter is sworn.~~(1) ~~Do you object to ..... as shorthand writer? Ans .....~~

~~The shorthand writer is sworn.~~(1) waf.

(1. RP 72. Delete, if none employed.)

A6. The Convening Order and names of the President and Members of the Court are read to the accused.(1) President to accused: Do you object to be tried by me as President or by any of the Members of the Court?

Ans NO.(2)

(1. RP 110. 2. If no objection, waiting member retires. RP 68(B). If objection, see procedure AA 51, RP 25, 71, 18, MML p 742.)

A7. The President, Members, JA, if any, and Offrs under instr, if any, are sworn.(1) The following are the ranks, names and units of the offrs comprising the Court, etc:

President	MAJOR	W A FREEMAN	2 CIRU
Member	Capt	JAW BELL	6 CIRU
Member	Lt	R AUDETTE	6 CIRU.
Judge-Advocate			
Prosecutor	LT	JM YEOMANS	6 CIRU.
Defending Offr	LT	HW WATSON	6 CIRU.

Questions by President: Is the Prosecutor a lawyer? Ans NO Is the Defending Offr a lawyer? Ans NO (2)

(1. RP 26, 27, 109, 111. List of offrs under instr will be returned separately with proceedings for information of Conv Offr.)
(2. If Pros a lawyer and Def Offr not, accused is entitled to an adjournment when RP 89 (B) and fn 2 were not followed. See D1 p 3.)

A8. The accused H46022 Pte FAIRCHILD, J H before arraignment make(s) (no) ~~(a)~~ plea(s) (1) waf.

(1. If a special plea is made for separate trial on one or more charges (RP 62(E), 108), or as to the jurisdiction of the Court (RP 34, 35(A), 113), or in bar of trial (RP 36), or as to accused's mental fitness to stand trial (AA 130, RP 57), or by one of several accused charged jointly to be tried separately (RP 16, 71), such plea, the addresses made in support or against, the evidence, if any, and finding are recorded per Notes. For forms of record see references in fns to RsP cited. Insert in AB rank and name of the accused making the plea.)

A9. The accused is ~~(are)~~ arraigned ~~(separately)~~ on all charges in the charge sheet.(1) The accused does ~~(don't)~~ not object to any charge.(2) There is no amendment to be made to the Charge Sheet.(3) The President records the pleas in Part I of the Schedule. waf.

(1. RP 31, 112. See para 1 of Instrs p 2. When more than one Charge Sheet see RP 62; when several accused to be tried separately see RP 71(C), and use separate copies of CF A96 to record proceedings. 2. RP 32, RP 33. If otherwise, delete and make appropriate record per Notes.)

A10. The Court ~~(is advised and)~~ considers the Instrs on Procedure after Arraignment at top of p 2. The proceedings are continued on Record Form "B". waf.

PRESIDENT OR JA WILL INITIAL ALL DELETIONS AND ALTERATIONS.

INSTRUCTIONS ON PROCEDURE AFTER ARRAIGNMENT.

1. *The accused may not plead or be found Guilty on more than one of two or more charges laid in the alternative.* (*RP* 37(*A*).) *As to withdrawal of alternative charges by Prosecutor see RP* 35(*C*). *No other charge can be withdrawn for any reason without authy from Convening Offr. If Convening Offr concurs, Court may accept plea of Guilty to lesser, etc, offence.* (*RP* 44(*H*).) *Accused may change a plea of Not Guilty to Guilty during trial.* (*RP* 38.) *As to refusing to plead or not pleading intelligibly see RP* 35(*A*). *As to plea when sentence may be death see RP* 35(*D*).

2. *The proceedings on each charge sheet* (*RP* 62) *after arraignment will be conducted as follows in the respective circumstances stated:*

I. If pleas to all charges are GUILTY, use Record Form B below.

II. If pleas to all charges are NOT GUILTY, use Record Form D on p 3.

III. If pleas to some charges are GUILTY and to other charges are NOT GUILTY and,

(a) Such mixed pleas occur when there are no alternative charges in the Charge Sheet, use Record Form C below. (*RP* 37(*A*).)

(b) Such mixed pleas occur in a set of two or more charges laid in the alternative, see RP 37 (*A*) *and fn* 2 *as to discretion of Court, (i) to try the accused on all such alternative charges as if he had pleaded Not Guilty thereto, or, (ii) to record the pleas as the findings of Court. After deciding between (i) and (ii), Court will proceed under foregoing instrs as may be appropriate to result of its decision. See MML p* 744 *Instrs* (2).

3. *As to responsibility of President to accused see RP* 59, 60(*C*); *powers and duties of JA see RP* 103; *duty of Prosecutor see RP* 60(*A*) (*B*); *duty and privileges of accused and Defending Offr see RP* 60(*C*), 87(*C*), 91, 92; *swearing and withdrawal of witnesses from Court see RP* 81, 82; *questioning of accused see RP* 80, 87(*C*), 92(*B*), *and of witnesses see RP* 83-85; *calling or re-calling of witnesses by Court, etc, see RP* 75-79, 86, 116; *use of Summary of Evidence at Trial see RP* 17(*E*) *fn* 6; *and responsibility of JA or Pres to record proceedings see RP* 94, 96.

RECORD FORM B—PROCEEDINGS ON PLEAS OF GUILTY TO ALL CHARGES.

B1. The President or JA, if any, complies with RP 35(B) by explaining to the accused the nature and meaning of the charge(s)(1), and that on his plea of Guilty there will be no regular trial but merely a consideration of the sentence to be awarded after he has been given an opportunity to make a statement in reference to the charge(s), call witnesses as to character and make an address in mitigation of punishment.(2)
(1. *RP* 35 *fn* 3. 2. *MML p* 54 *para* 47.)

B2. President to accused: The Court will now receive any statement you desire to make in reference to the charge(s).(1) If it appears from your statement that there are circumstances which indicate that you do not understand the effect of the plea of Guilty(2), or which show provocation or extenuation in respect of which in your interest the witnesses for the Prosecution should be examined(3), we shall advise you to change your plea to Not Guilty. In making a statement you will not be sworn or subject to cross-examination; and anything you say will not be used in evidence against you after you change your plea. If, however, it appears to the Court that your statement affects only the amount of punishment to which you are liable, you will not be advised to change your plea and you will be given an opportunity later to prove your statement by sworn testimony, if you so desire.(4)

President to accused: Do you wish to make a statement? Ans. NO.(5)
(1. *RP* 37(*B*). 2. *RP* 37(*D*) *fn* 6. 3. *RP* 35(*B*) *fn* 5 *para* 3, *MML p* 54 *para* 47. 4. *See para E3 of Record Form E.* 5. *Statement, if any, recorded per Notes.*)

B3. The Court considers the accused's statement.(1) The Court decides (not) to advise accused to change his (their) plea(s) of Guilty to Not Guilty on ..... charge(s). The accused is (are) so informed, and he (they) change(s) his (their) plea(s) on ..... charge(s). Part I of the Schedule is amended accordingly.
(1. *Court may be closed to consider the statement. Delete whole or part not used.*)

B4. On the charge(s) to which the plea(s) of Guilty is (are) not changed the President records finding(s) of Guilty in Part I of the Schedule.(1)
(1. *RP* 35(*B*). *If any plea(s) is (are) changed, use Record Form C or D as appropriate.*)

B5. The Summary of Evidence is marked Ex "A", initialled and read aloud by the President.(1)
(1. *If there is no Summary, or if it is inadequate, comply with RP* 37(*B*). *If there is any evidence inconsistent with any plea standing as Guilty, Court will advise accused to change such plea and, if changed to Not Guilty, try such charge(s) by use of paras D1 to D8 inclusive of Record Form D on p* 3. *RP* 37(*D*).)

B6. The accused having been found Guilty on one or more of the charges, the proceedings are concluded by using Record Form E on p 3.

RECORD FORM C—PROCEEDINGS ON MIXED PLEAS OF GUILTY AND NOT GUILTY.

C1. As to the charges on which accused pleaded NOT GUILTY the trial is continued by using paras D1 to D8 inclusive of Record Form D on p 3 before proceeding with C 2.(1)
(1. *RP* 37(*A*) (*E*).)

C2. The charges on which accused pleaded GUILTY are read to him (them) again, and the trial is continued by using paras B1 to B5 of Record Form B above.(1)
(1. *Under B5 such parts only of the Summary of Evidence are read as relate to the charges dealt with under C2. If any plea is changed to Not Guilty, trial thereon proceeds by complying with paras D1 to D8 inclusive in Record Form D on p* 3 *and making an appropriate record thereof on a separate sheet.*)

C3. The accused having been found Guilty on one or more of the charges, the proceedings are concluded by using Record Form E on p 3.

PRESIDENT OR JA WILL INITIAL ALL DELETIONS AND ALTERATIONS.

RECORD FORM D—PROCEEDINGS ON PLEAS OF NOT GUILTY TO ALL CHARGES.

D1. President to accused: Do you wish to apply for an adjournment on the ground that any of the rules relating to procedure before trial have not been complied with, and that you have been prejudiced thereby, or on the ground that you have not had sufficient opportunity to prepare your defence? Ans. .....(1)
(1. *If "yes", see RP* 39(*A*) *for procedure. Statement or evidence, if any, is recorded per Notes.*)

D2. The Prosecutor makes (an) (no) opening address.(1)
(1. *RP* 39(*B*), 60(*A*) (*B*), 90, 92(*C*) (*D*). *Record address per Notes, subject to RP* 95(*C*).)

D3. The evidence for the Prosecution is taken.(1)
(1. *RP* 39(*C*), 114, *KR Can* 555. *Record evidence per Notes. As to Prosecutor giving evidence himself see RP* 39(*D*) (*E*).)

D4. The Prosecution is closed.(1) The Defending Offr submits that the evidence for the Prosecution does not establish a prima facie case against the accused on the ..... charge(s).(2) The Court is closed, and considers the submission.(3) The Court is re-opened, and the President announces that the submission is disallowed on the ..... charge(s), and allowed on the ..... charge(s), and that, accordingly, the trial will proceed on the former, but the accused is (are) found Not Guilty on the latter charge(s).(4)
(1. *Delete remainder of this para, if submission not made.* 2. *Arguments on submission, answer and reply are recorded per Notes.* 3. *RP* 40 *fn* 1. *See MML p* 72 *paras* 12-14 *and p* 81 *para* 42. 4. *Delete part not used. If accused acquitted on all charges, use second alternative in para D8.*)
NB: *If trial proceeds, accused must be allowed great latitude in making his defence, and the Court should not stop his defence solely on ground of irrelevance.* (*RP* 60(*C*), 114, 115.)

D5. President to accused: You will now proceed with your defence.(1) You may, if you wish, give evidence yourself on oath as to the facts or your character or both, in which case you will be subject to cross-examination.(2) You may, however, make a statement without being sworn, and you will not be subject to cross-examination.(3) But a statement which could have been made on oath will not carry with the Court the same weight as sworn testimony.(4) You may call witnesses in your defence and as to character, whether you give evidence or make a statement or do neither.

President to accused: Do you wish to give evidence yourself as a witness, make a statement, or do neither? Ans. .....
Do you intend to call witnesses on your behalf? Ans. .....
Are they witnesses as to character only? Ans. .....
(1. *RP* 115. 2. *RP* 40(*A*), *see* 80(*D*). 3. *RP* 40 *fn* 10. 4. *RP* 40 *fns* 2, 9.)

D6. Consequent on the answers recorded in para D5 the appropriate procedure for the defence is followed.(1)
(1. *RP* 114, 115, 116. *For procedure see Notes on back of Convening Order, CF A95. Evidence for accused as to his character should, if in his interest, be given before the finding. See RP* 46(*A*) *fn* 1, 86(*C*). *Note the further opportunity in para E1 of Record Form E. Record per Notes addresses, statement, evidence and any summing up by the JA under RP* 42, 103(*e*).)

D7. The Court is closed to consider the finding(s).(1) The finding(s) of the Court is (are) recorded in Part I of the Schedule.(2) The Court is re-opened.
(1. *RP* 43, 117(*A*). *See Notes in Part I of Schedule.* 2. *RP* 44(*A*).)

D8. The President announces the finding(s), if any, of Not Guilty, and states to the accused that the finding(s) of the Court on the ..... charge(s), being subject to confirmation, will be promulgated later.(1)
Or, The President announces that the accused is found Not Guilty on all charges and is to be released forthwith, and that the proceedings are accordingly terminated. Part I of the Schedule is dated and signed.(2)
(1. *AA* 54(3) (6), *RP* 45, 120(*A*). 2. *AA* 54(3), *RP* 45, 117. *This alternative announcement is not applicable when there are pleas of Guilty outstanding and dealt with under Record Form B or C.*)

D9. The accused having been found Guilty on one or more of the charges, the proceedings are concluded by using Record Form E below.

RECORD FORM E—PROCEEDINGS ON CONVICTION BEFORE SENTENCE.

E1. President to accused: Do you wish to give evidence yourself or to call any witnesses as to your character?(1)
Ans. NO.
(1. *If evidence has already been given by accused or his witnesses as to his character, delete this para. RP* 37(*C*) *fn* 4, 46 *fn* 1. *Accused and witnesses are sworn. Evidence recorded per Notes.*)

E2. The Prosecutor produces Statement(s) as to Character and Particulars of Service(1), and certified true copy (copies) of Conduct Sheet(s)(2), purporting to refer to the accused, which he submits to the Defending Offr for examination, and then to the Court for admission in evidence. The Court is satisfied that these documents refer to the accused, because (i) they purport to be signed in the manner required by AA 163(l) (g) (h), and (ii) they purport to refer to (a) soldier(s) having the same number, rank, name and corps as the accused. Admitted in evidence and marked Ex "B" and Ex "C" respectively.(3)
(1. *MFB* 355 *or AFB* 296. 2. *MFM* 6. 3. *RP* 46, *KR Can* 558. *If above documents not produced, see RP* 46 *fn* 1 *para* 1.)

E3. President to accused: Do you wish to address the Court on the Statement(s) and Conduct Sheet(s), and in mitigation of punishment?(1) Ans. YES.(2)
(1. *RP* 37(*C*), 46(*D*). 2. *Address, if any, recorded per Notes. Court should permit accused or his witnesses to prove on oath anything here or previously stated which would affect the amount of punishment. RP* 37(*F*) *fn* 7.)

E4. The President states that the Court is closed to consider the sentence, and that the sentence to be awarded by the Court, being subject to confirmation, will not be announced, but will be promulgated later, and the proceedings in open court are accordingly terminated.(1)
(1. *AA* 54(6), *RP* 120(*A*).)

E5. The Court considers the sentence.(1) The President records the sentence in Part I of the Schedule, which is dated and signed by him and the JA, if any.(2)
(1. *When several accused tried separately see RP* 71 (*D*). *One sentence only, comprised of the punishment or punishments laid down in AA* 41, 44 *and its proviso, is to be awarded to cover all charges in all charge sheets on which accused found guilty. RP* 48. *As to sentences see AA* 44, 138, 182, *RP* 46-50, 69, 118, 119(*A*), *KR Can* 308, 330, 563-566, *Overseas AO* 309, 2321*B*, *MML p* 60, 757-759. *As to sentences assigned for civil offences by the law of England see AA* 41(5), *MML p* 130. *When accused already under sentence of imprisonment or detention see AA* 44(1)(*b*), 68(1), *KR Can* 504. 2. *RP* 50. *As to release from arrest by Confirming Offr see KR Can* 567. *As to assembly and disposal of record after trial see Instrs on back of Convening Order.*)

PRESIDENT OR JA WILL INITIAL ALL DELETIONS AND ALTERATIONS.

CHARGE SHEET

The accused, No H-46022 Private John Harris FAIRCHILD, of The Canadian Infantry Corps, on the strength of No 6 Canadian Infantry Reinforcement Unit, a soldier of The Canadian Army Overseas, is charged with:

FIRST CHARGE
SECTION 15(1)
ARMY ACT

WHILST ON ACTIVE SERVICE, ABSENTING HIMSELF WITHOUT LEAVE

in that he,

in the Field, did absent himself without leave from 2359 hours on the 2nd day of September 1944 until apprehended by the military police at Brighton at 1500 hours on the 21st day of September 1944. Cost of apprehension £0-8-0.
(Total absence - 18 days 15 hours 1 minute)

(C.F. Clingan) Lt.-Col
A/Commanding Officer
6 Cdn Inf Reinf Unit

In the Field
26 Sep 44.

To be tried by Field General Court Martial.

(J GAVAN POWER) A/Col
AT/Comd
"A" Gp Cdn Rft Units
C A (O)

Field
26 Sep 44

w.o.f.

FIELD GENERAL COURT-MARTIAL

(Whether the accused to be tried is under his comd or not, a FGCM may on application to him be convened by any offr of Cdn Army Overseas, or of any other force if authorized in law, in immediate comd of troops on active service, subject to RP 105(C) and restrictions imposed by appropriate authy. AA 49, 50, RP 104-107, 114. As to the duties and privileges of the Convening Offr in dealing with the application see MML Chap V paras 20 and 23, RP 87(B).

There should be a separate Convening Order for each person to be tried separately by the same Court. RP 71(C), 109. As to separate charge sheets see RP 62, and as to separate trial on charges in the same charge sheet see RP 108. As to two or more accused charged jointly see RP 16, 109.

As to reasons for showing (a) permanent or confirmed rank, and (b) appmt, A/rank or A/appmt, if any, see AA 182, 183, fns, KR Can 308, 328, 330.)

ACCUSED.

Number.	(a) Prmnt R.	(b) Appmt, A/R or A/Appmt.	Full Christian Names.	Surname.	Unit.
H46022	Pte		John Harris	FAIRCHILD	6 CIRU CIC

CONVENING ORDER.

1. Whereas complaint has been made to me, the undersigned, that the person~~(s)~~ named above as the accused, being subject to military law, has (~~have~~) committed the offence~~(s)~~ set forth in the Charge Sheet~~(s)~~ attached and on (*date*) 26 Sep 44 endorsed by me, ~~(or by an offr of my staff for me),~~ " To be tried by Field General Court-Martial ".

2. And whereas I am of opinion that it is not practicable that such offence~~(s)~~ should be tried by an ordinary General Court-Martial ; ~~(and that it is not practicable to delay the trial for reference to a superior qualified offr.)~~

(Delete part in brackets when not required for compliance with RP 105(C).)

3. I hereby convene a Field General Court-Martial to try the said person~~(s)~~, and to consist of the Offrs appointed or detailed hereunder.

4. ~~I am unable to appoint to the Offr to serve on the Court, (b) the Officer President, for the reasons I have attached here.~~

(AA 49, RP 106(B), 107(A). Delete the whole or part, if not applicable.)

5. ~~I also appoint a Judge Advocate to act at the Trial of the said person.~~

(RP 106(E). Delete, if none appointed.)

PRESIDENT.

(Rank.)	(Must be named. RP 106.)	(Unit.)
MAJOR	W A FREEMAN	2 CIRU

MEMBERS.

(Rank.)	(Named or detailed. RP 106.)	(Unit.)
Capt	to be detailed by OC 6 CIRU	
Lt	to be detailed by OC 6 CIRU	

WAITING MEMBER.

(Rank.)	(Named or detailed, if any. RP 106.)	(Unit.)
Capt	to be detailed by OC 6 CIRU	

~~JUDGE ADVOCATE.~~

(Rank.)	(Must be named, if any. RP 106.)	(Unit.)

On Active Service in the Fd

in England (Country.)

Date 26 Sep 44

J Gavan Power (Signed personally. RP 105 fn 2.) — A/Colonel (Rank.)

(J GAVAN POWER)

Commanding T/Comd "A" Gp Cdn Rft Units CA(O)

Convening Officer.

CONVENING OFFR WILL INITIAL ALL DELETIONS AND ALTERATIONS

4/38A CFA86 (To Hdq of AFA3) 40/P & S/1097 (4031) *(See overleaf for oaths and notes for use on trial.)*

W.A. Freeman
Maj 02.

Medical Offr's Certificate
K R (Can) para 557

I certify that I have this morning examined No: H46022 (Rank)
Pte Fairchild J.H. (Name) 6 C.I.B.H. and in my opinion he is

~~UNFIT~~ FIT to undergo trial by Court Martial.

Station

Date 27-4-44 waf. SGD [signature] Capt. (Medical Offr)

Plea in the Case of H 46022 Pte Fairchild J.H
by H.W. WATSON. Lt.

Sir, This soldier has for many months now been endeavouring to get back to his Regt in the field and I wish to point out to the Court that though the accused is A Calgary he was continually taken off one draft after another for one reason, that was because he was a D.M.

By the time this soldier was removed from his fifth or sixth draft his spirits were lower than it would be advisable to describe.

However a specialist draft came along and despite the fact that this man was trained in the field, was A Calgary, he was thrown off this draft — A spirit, keyed to the pitch of the Times, will soon break up if given so many unreasonable set backs. As this man received

You will admit that when you come overseas to fight, you possess every qualification, you are mentally ready for what lies ahead of you — And then when you expect that your services are really needed — you are continually refused for no apparent reason — then you can readily understand why a man goes A.W.L.

I request that you consider these facts while making your decisions and please Gentlemen be lenient — you and I may

wf.

as this man has committed no serious crime and more than anything else he desires an opportunity to prove himself to himself and his country.

He is young — capable — well trained — and physically fit — His place is in the field not the guard House.

H. W. Watson Lt.

(H. W. WATSON) Lt
defending Offr.
27 Sep 44

W. O. Spearman Major.
20 IRR.

SUMMARY OF EVIDENCE

In the case of No H-46022 Private John Harris FAIRCHILD, of The Canadian Infantry Corps, on the strength of No 6 Canadian Infantry Reinforcement Unit, a soldier of The Canadian Army Overseas.

By direction of The Commanding Officer this Summary of Evidence is taken on oath.

First Witness for the Prosecution: D-51032 L/Cpl Serifini, L, of The Cdn Inf Corps, on strength of 6 C.I.R.U., having been duly sworn states as follows:

" I recognize the accused as No H-46022 Pte Fairchild, J.H."

The accused declines to cross-examine this witness.

L. Serifini L/Cpl
(L. Serifini)

Second Witness for the Prosecution: Lieut W.A. Champ, of The Cdn Inf Corps, on strength of 6 C.I.R.U., having been duly sworn states as follows:

"I produce a certified true copy of an extract from 6 C.I.R.U. Daily Orders Part II d/20 Sep 44, pertaining to the accused."

CERTIFIED TRUE COPY OF AN EXTRACT FROM 6 C.I.R.U. DAILY ORDERS PART II D/20 Sep 44 PRODUCED AND MARKED EXHIBIT "A".

" I produce a certificate in accordance with Army Act Section 163(jj) signed by the A.P.M. 191 H.Q. Provost Company."

CERTIFICATE IN ACCORDANCE WITH ARMY ACT SECTION 163(jj) PRODUCED AND MARKED EXHIBIT "B".

"I produce C.M.H.Q. Form 1000:55: Expense Voucher d/23 Sep 44 signed by Capt R.E. Birch, Admin Officer, D.P.M's Br, C.M.H.Q."

C.M.H.Q. FORM 1000:55, EXPENSE VOUCHER d/23SEP 44 PRODUCED AND MARKED EXHIBIT "C".

The accused declines to cross-examine this witness.

..... Lieut
(W.A. Champ)

The accused was then cautioned as follows: "Do you wish to make a statement or to give evidence on oath?" "You are not obliged to say anything or to give evidence unless you wish to do so, but whatever you may say or any evidence you may give will be taken down in writing and may be used in evidence."

The accused declines to make a statement and reserves his defence.

I certify that the foregoing Summary of Evidence, consisting of one page, was taken down by me in the presence and hearing of the accused, and that Rules of Procedure 4 (C),(D),(E),&(F) have been duly complied with.

In the Field
26 Sep 44

W.A.C. Exhibit "A"

..... Lieut
(L.H. Green)
Officer detailed to take the Summary of Evidence

Exhibit A
L85

LAST ORDER
No 222
19 Sep 44

6 CANADIAN INFANTRY REINFORCEMENT UNIT
DAILY ORDERS PART II
issued by
COLONEL J. GAVAN POWER E.D., OFFICER COMMANDING

THIS ORDER
NO 223
20 Sep 44

PAGE 5

12. ABSENT WITHOUT LEAVE

12-D A.W.L. from 2359 hrs 2 Sep 44. Still A.W.L. at 2359 hrs 10 Sep 44. (8th day).

H-46022 Pte Fairchild, J.H. (Lake Sup R(MOT)

Sgd R. Laverdure
(R. Laverdure) A/Captain
for Adjutant
6 Cdn Inf Reinf Unit

Certified true copy ..... Capt
Adjutant & C.I.R.U.
officer having custody of Regt'l books.

26 Sep 44

.....CAPT.,
ADJT., 6 CDN. INF. RFT. UNIT

Exhibit "B"
W.F.

Certificate in accordance with Army Act, Section 163(ii).

I certify that No. [illegible] Rank [illegible] Name [illegible] Unit [illegible]
at about [illegible] was arrested at [illegible] BRIGHTON.
military uniform.

Signature of Provost Marshal, A.P.M, or other Officer into whose custody the above named person was taken into arrest.

Major,
A.P.M. 191 H.Q. Provost Company.

Exhibit "C"

Expense Voucher Re—: Ref: K.R. & O. (Can) 539

Reg. No. D46012 Rank Pte Name Fairchild J H Unit 6 C I R U

The following expenses were incurred in apprehending and returning the M.N Soldier to his ~~Unit From~~ London from Brighton

Date	Particulars (½ portion)	Amount		
23 Sept 41	Escorts return fare from LONDON To Brighton		4	0
	Prisoners single fare to LONDON From Brighton		4	0
	Prisoners fare from To			
	Escorts & Prisoners expenses for Bed, Meals, Bus fares			
	Total £		8	0

I certify that the above statement of Expenses is Correct, and that the amounts are fair and just.

2 Lt TC Exhibit "O" W.J.

W Reid Capt.

Officer Issuing Railway Warrant and Expense monies.

R. E. BIRCH,
ADMIN. OFFICER-D.P.M's BR.
C.M.H.Q.

No. 6 Area Provost Company, Canadian Provost Corps, London.

C.M.H.Q. 1000:55
40/P & S/483(3287)

Exhibit 'B.C.' No. 1

ARMY FORM B.296 (WAR).

Statement as to Character and Particulars of Service of Accused.

(For Use at Trials by Field General Courts-Martial only).

Number.	*Rank.*	*Name.*	*Regiment (or as the case may be).*
H 46022	Pte	Fairchild, J.H.	6 Cdn Inf Reinf Unit

NOTE.—The Field Conduct Sheet is to be produced in Court with this statement but is not to be annexed to the proceedings. The numbers herein stated should correspond with the number of ENTRIES in the Field Conduct Sheet, promiscuous being given to the most serious offence in each entry. If the charge is for drunkenness or absence without leave, the entries for drunkenness or absence, as the case may be, should be stated separately. Any recognized special acts of gallantry or distinguished conduct recorded on the Field Conduct Sheet should also be inserted here.

1. The following is a fair and true summary of the entries in the Field Conduct Sheet of the accused, exclusive of convictions by a court martial or a civil court :—

For AA Sec 15(1) ..... 5 times.

For AA Sec 11 ..... 1 times.

For ..... times.

For ..... times.

Date of first entry in Field Conduct Sheet 1 Aug 43

Date of last entry in Field Conduct Sheet 27 Jul 44

2. Previous convictions of the accused by a court martial or a civil court are set out in the Schedule overleaf.

*~~3. The accused at the present time is under sentence for ..... beginning on the ..... day of .....~~

4. The accused has been awaiting trial on the present charges for No days in civil custody; and for 6 days in military custody, *i.e.*, No days in open arrest, 6 days in close arrest; of which No days were spent in hospital.

5. The present age of the accused is 23 yrs old

6. The date of his attestation ~~calling up for military service~~ is 5 Jul 40

7. The service which the accused is allowed to reckon is 3 yrs 308 days

8. The accused is in possession of‡ CVSM & Clasp

9. (*If the accused is a warrant officer or N.C.O.*). The accused has served continuously, without reduction, to the present date—

	Date of Promotion.
In the substantive rank of	.....
In the war substantive rank of	.....
In the acting rank of	.....

*Strike out if not applicable.

‡State the military decorations (if any) held by accused.

INSTRUCTION.—*If any matter in any of the above paragraphs cannot be stated from the regimental books the paragraph must be struck through.*

W.A.F.

(31114) W1.8670/888 100,000 4/42 A.R.H.W.Ltd. Gp.698 Forms/B.296(War)/2
(33459) W1.29256/1872 50,000 9/42 " "

SCHEDULE OF CONVICTIONS BY A COURT-MARTIAL OR CIVIL COURT.

Description of Court by which tried.	Date and Place of Trial.	Charges upon which convicted.	Sentence of the Court.	Punishment remitted or sentence suspended.
FGCM	Field 3 Dec 43	AA Sec 15(1) AWL 14 days 17 hrs 50 mins	60 days detn	20 days remission

I HEREBY CERTIFY that the foregoing particulars, which have been extracted from the regimental books in my custody, are correct to the best of my knowledge and belief.

Signed this 27 th day of Sep 44

CAPT.
ADJT., 6 CDN. INF. RFT. UNIT

Exhibit "E" of wat.

No. H 46022 Name FAIRCHILD, J.H. | Sqn, Battery, or Company | Corps Cdn Inf Corps | Date of enlistment 5 Jul 40 | GC Badges N/A | Service or Proficiency Pay N/A | 3/17 MFM 6 (AFB 122) 40/P&S/136 (5413

Date of last entry in Company Conduct Sheet N/A | No. and date of last drunk N/A | Period not reckoning towards freedom from extra fine N/A | Sheet No 1 | Signature OC Company, etc M McLeod Major | Character

Place	Date of offence	Rank	Cases of drunkenness	OFFENCE	Names of Witnesses	Punishment awarded	Date of award or of order dispensing with trial	By whom awarded	Remarks
				Previous sheet destroyed 5 Jul 42 - No cases of drunkenness.					
Field	1-8-43	Pte		AA 15(1) AWL 5 hrs 51 mins)	Capt Rogers	forf 4 days pay	2 Aug 43	Lt col WT Ibbott	
Field	4 Sep 43	Pte		AA 11 Neglect to obey standing orders	CSM Spicer	7 days C.B.	6 Sep 43	Capt WR Rogers	
Field	3-10-43	Pte		AA 15(1) AWL 10 hrs 31 mins	CSM Spicer	forf 10 days pay	4 Oct 43	Lt col WT Ibbott	Forf 1 days pay for AWL
Field	30-10-43	Pte		AA 15(1) AWL 14 days 17 hrs 50 mins	Documentary	60 days detn (20 days remission)	3 Dec 43	FGCM	forf 15 days pay for AWL
Field	15-5-44	Pte		AA Sec 15(1) AWL 7 days 6 hrs 16 mins	Documentary	28 days F.P. 28 days pay	23-5-44	Lt col FM Hearn	forf 8 days pay for AWL
Field	23-6-44	Pte		AA 15(1) AWL 8 hrs 41 mins	Documentary	10 days pay	27 Jun 44	Lt col Clingan	forf 1 days pay for AWL
Field	27-7-44	Pte		AA 15(1) AWL 5 hrs 15 mins	CSM Petrie	14 days C.B.	28 Jul 44	Lt col Clingan	

certified true copy, consisting of one page ..... previous having custody of regtl books.

CAPT
ADJT., 6 CDN. INF. BDE. UNIT

wat.

(PTO)

LIST OF WITNESSES

In the case of No H-46022 Private John Harris FAIRCHILD, of The Canadian Infantry Corps, on the strength of No 6 Canadian Infantry Reinforcement Unit, a soldier of The Canadian Army Overseas.

PROSECUTION

D-51032 L/Cpl Serifini, L., of The Cdn Inf Corps on strength of 6 C.I.R.U.
Lieut W.A. Champ, of The Cdn Inf Corps, on strength of No 6 C.I.R.U.

DEFENCE

NIL

In the Field
26 Sep 44.

waf.

LIST OF EXHIBITS

IN the case of No H-46022 Private John Harris FAIRCHILD, of The Canadian Infantry Corps, on the strength of No 6 Canadian Infantry Reinforcement Unit, a soldier of The Canadian Army Overseas.

Exhibit "A" - Certified true copy of extract from 6 CIRU Daily Orders Part II d/20 Sep 44.

Exhibit "B" - Certificate in accordance with Army Act Section 163 (JJ).

Exhibit "C" - C.M.H.Q.Form 1000:55 Expense Voucher d/23 Sep 44

In the Field
26 Sep 44.

W.J.

1. I acknowledge that I have been served with a copy of the Summary of Evidence taken prior to my trial by Court-Martial. I further acknowledge that I have been served with a true copy of the charge (s) upon which I am being brought to trial by CM.

2. I desire the services of an officer to represent me at my trial by CM. I request the services of:

Lt. R.W. Watson

if he is available.

In the Field
26 thdry ofSep 1944.

W. Darfield Lt.

W.S.A.

CERTIFICATE OF WAITING MEMBER

In the case of H46022 Pte. J.H. Fairchild

I hereby certify that there were no objections to the Members who constituted the Court which tried the a/m soldier by Field General Court-Martial. The Waiting Member Capt P.H. Poisson was therefore permitted to withdraw.

In the Field.
27 Sep. 44

W.A. Freeman (.....) Major.
President.

H.Q.C. 55-F-884 CONFIDENTIAL

DEPARTMENT OF NATIONAL DEFENCE—OTTAWA, CANADA

SUBJECT

FIELD GENERAL COURT-MARTIAL

FAIRBANKS, DOUGLAS EUGENE M- [illegible] TE.

CONFIDENTIAL
H.Q.C. 55-F-884

CENTRAL REGISTRY	DATE	P.A. OR B.F.	INITIALS	REFERRED TO	FOR	INITIALS	DATE
				(If purpose for which referred cannot be expressed on one line, use "Minute" and enter here "With Minute")			2-12-46

OVERSEAS COMBINED

NOTICE

1. Files should be retained no longer than absolutely necessary. If a file is frequently needed at short intervals, it is better to B.F. it for two or three days than keep it out of Central Registry indefinitely. This ensures it being completed and kept in order, and also gives other officers an opportunity to see same.
2. Central Registry should be notified whenever a file is passed direct to another branch.
3. All outgoing letters should bear the official file number.

PASS THIS FILE IN ENVELOPE

SCHEDULE.

PART I. PLEA(S), FINDING(S) AND SENTENCE.

Accused : .....

Charge. (Insert "alternative" where applicable.)	Plea. (See Instrs p 2.)	Finding. (See note below.)	(Space for use as required for further charges, accused charged jointly, special findings, etc.)
1st AA 18(4)	Guilty	Guilty	
2nd AA 4(D) (alternative)	Withdrawn by prosecutor before arraignment.		
3rd			
4th			
5th			
6th			

(Note : As to findings for lesser offences see AA 56, RP 44 ; findings on alternative charges see MML p 483 fn 4 para 2, RP 44 ; special findings see RP 44 and MML p 753, and in loss of kit see RP 44 fn 6.)

~~At present under sentence for ..... beginning on (date) .....~~ (1)

(1. Insert sentence being served, or delete, if not applicable. See RP 46(A). Information should be found on MF B355 or AF B296.)

Time in confinement awaiting present trial—a total of 7 days, of which ~~one~~ nil days were spent in hospital.(1)

(1. See RP 46(A) fn 2. Information should be found on MF B355 or AF B296 admitted in evidence under E2.)

Sentence Awarded by the Court :

To undergo detention for six(6) months.

(Sgd) W.A. Dean Capt. 22 April 44 (Sgd) W.C. Shaw Major
Judge-Advocate, if any. Date Awarded. President. (RP 45, 50.)

(See back of Convening Order as to assembly and disposal of record after trial.)

PART II. MINUTE WHERE CONFIRMATION RESERVED. (AA 54(5), RP 120(F), MML p 760.)

Date ..... (Sgd) ..... Commanding .....

PART III. DECISION OF CONFIRMING OFFR ON FINDING(S) AND SENTENCE.

(For duties and powers see AA 54, 57, RP 37(D) fn 6, 46(A), 51-56, 120, MML pp 759-761, KR Can 567-577. Acquittals require no confirmation and cannot be revised : AA 54(2). Sending back finding or sentence for revision by Court : AA 54(2), RP 120(G). If not confirmed, accused may be tried again : AA 157, MML p 64. Minute of confirmation or non-confirmation may be altered before promulgation : RP 53, MML p 65. Quashing after promulgation : KR Can 573. Duties and powers of reviewing offrs : AA 57, 57A, RP 53A, 54. The Confirming Offr must sign here personally. AA 172 fn 1.)

My decision on the finding(s) and sentence set forth in Part I is : "I confirm the finding & sentence & the court dont remit five month detention"

~~I direct that the accused be not committed to prison or detention barracks until further orders.~~ (1)

(1. AA 57A. Delete if not used.)

Date 26 Apr 44 (Sgd) W.H. Matheson Brig
Commanding CCRA & Can Corps
Confirming Officer.

PART IV. PROMULGATED AND EXTRACTS TAKEN. (RP 53, KR Can 576, 577.)

Accused.	Date.	Signature of Offr.
M 101015 Pte Douglas Eugene Haviland	27 Apr 44	D.L. Beaudry Lieut. Actg Adjt, 2 Can Corps Def Coy

ALL DELETIONS AND ALTERATIONS WILL BE INITIALLED.

RECORDED AT CMHQ IN AB 160 2 KKK 2

CFA96 (In lieu of AFA3) 40/P & R/1668(2864)

FIELD GENERAL COURT-MARTIAL

Convened by Order of Lt. B. Matthews Brig. Comd CCRA & 2 Can Corps dated 22 April 44

ACCUSED.

(As to the trial of two or more charged jointly see RP 16, 71, 109. As to reasons for showing (a) permanent or confirmed rank, and (b) appmt, A/rank or A/appmt, if any, see AA 182, 183, fns, KR Can 308, 328, 330.)

Number.	(a) Prmnt R. (b) Appmt, A/R or A/Appmt.	Full Christian Names.	Surname.	Unit.
M-101015	Pte.	Douglas Eugene	Haviland	2 Can Corps Def Coy

PROCEEDINGS REVIEWED 11 May 44
W.C. Lynch Lieut.
REVIEWING OFFICER, JAG BRANCH C.M.H.Q.

PROCEEDINGS OF TRIAL.

Held in the Fd in (country) England on (date(s)) 22 April 44.

RECORD FORM A—OPENING PROCEEDINGS AND ARRAIGNMENT. 6/11

A1. The President, Members, waiting Member, JA, if any, and Offrs under instr, if any, assemble, and the Court is closed.

(PRINTED MATTER, NOT IN ITALICS FOR GUIDANCE, WILL BE DELETED, IF NOT USED OR APPLICABLE, AND INITIALLED BY PRES OR JA. The Schedule referred to throughout is on p 4. Citations do NOT include all relevant fmn ROs. For guidance on procedure when a variation in this form arises, see form for GCM in MML pp 741 to 759. A brief record of such variation will be made and given a number having reference to appropriate or preceding para number herein. See back of Convening Order, CF A95, for oaths and instrs on how to record addresses, evidence, etc, which instrs are hereafter called "Notes". As to general provisions for conducting the trial see AA 53, RP 56, 63-70, 73, 74, 94, 103, 119, 132.)

A2. The President initials and lays before the Court the Convening Order and Charge Sheet(s) attached thereto.(1) The Court is satisfied that it is properly convened and constituted(2), accused is (are) amenable to military law, and each charge discloses an offence.(3)

(1. As to use of Summary of Evidence see RP 17 fn 6. 2. AA 49, 50, RP 105-107. 3. RP 11-13, 23, 24.)

A3. The Court is opened. The accused is (are) brought before the Court. At 1030 hours trial commences.

A4. The Prosecutor produces a Medical Certificate that accused is (~~are~~) fit to undergo trial by court-martial.(1) ~~The Prosecutor informs the Court that accused elect(s) to be tried by court-martial instead of being dealt with summarily by the CO.~~

(1. KR Can 557. 2. AA 46(B), RP 60 fn 1. For effect see KR Can 563(c). Delete, if not applicable.)

A5. ~~President to accused : Do you object to the ..... as interpreter ? Ans .....~~

~~The Interpreter is sworn (1). Do you object to ..... as shorthand writer ? Ans .....~~

~~The shorthand writer is sworn.~~

(1. RP 72. Delete, if none employed.)

A6. The Convening Order and names of the President and Members of the Court are read to the accused.(1) President to accused : Do you object to be tried by me as President or by any of the Members of the Court ?

Ans No(2)

(1. RP 110. 2. If no objection, waiting member retires. RP 68(B). If objection, see procedure AA 51, RP 25, 71, 18, MML p 742.)

A7. The President, Members, JA, if any, and Offrs under instr, if any, are sworn.(1) The following are the ranks, names and units of the offrs comprising the Court, etc :

President	Major	W.C. Shaw	2 Can Mac R.A.S.C.
Member	Captain	A. Lumsdale	6 Can A/Tk Regt R.C.A.
Member	Captain	R. Craig	6 Can A/Tk Regt R.C.A.
Judge-Advocate	Captain	W.A. Dean	CMHQ attd HQ 1 Can Army
Prosecutor	Lt.	A. Campbell	4 Can Armd Div Sig Regt
Defending Offr	Lt.	D.K. Matheson	2 Can Corps Pro. Coy

Questions by President : Is the Prosecutor a lawyer ? Ans No Is the Defending Offr a lawyer ? Ans No (2)

(1. RP 26, 27, 109, 111. List of offrs under instr will be returned seperately with proceedings for information of Conv Offr.)
(2. If Pros a lawyer and Def Offr not, accused is entitled to an adjournment when RP 89 (B) and fn 2 were not followed. See DI p 3.)

A8. The accused ..... before arraignment make(s) (no) ~~fur~~ plea(s) (1)

(1. If a special plea is made for separate trial on one or more charges (RP 62(E), 108), or as to the jurisdiction of the Court (RP 34, 35(A), 113), or in bar of trial (RP 36), or as to accused's mental fitness to stand trial (AA 130, RP 57), or by one of several accused charged jointly to be tried separately (RP 16, 71), such plea, the addresses made in support or against, the evidence, if any, and finding are recorded per Notes. For forms of record see references in fns to RsP cited. Insert in AB rank and name of the accused making the plea.)

A9. The accused is (~~are~~) arraigned (~~separately~~) on ~~the~~ charge(s) in the charge sheet.(1) The accused does (~~do~~) not object to any charge.(2) There is no amendment to be made to the Charge Sheet.(3) The President records the pleas in Part I of the Schedule.

(1. RP 31, 112. See para 1 of instrs p 2. When more than one Charge Sheet see RP 62 ; when several accused to be tried separately see RP 71(C), and use separate copies of CF A96 to record proceedings. 2. RP 32, RP 33. If otherwise, delete and make appropriate record per Notes.)

A10. The Court is closed and considers the Instrs on Procedure after Arraignment at top of p 2. The proceedings are continued on Record Form B & E.

PRESIDENT OR JA WILL INITIAL ALL DELETIONS AND ALTERATIONS.

INSTRUCTIONS ON PROCEDURE AFTER ARRAIGNMENT.

1. *The accused may not plead or be found Guilty on more than one of two or more charges laid in the alternative.* (*RP* 37(*A*).) *As to withdrawal of alternative charges by Prosecutor see RP* 35(*C*). *No other charge can be withdrawn for any reason without authy from Convening Offr. If Convening Offr concurs, Court may accept plea of Guilty to lesser, etc, offence.* (*RP* 44(*H*).) *Accused may change a plea of Not Guilty to Guilty during trial.* (*RP* 38.) *As to refusing to plead or not pleading intelligibly see RP* 35(*A*). *As to plea when sentence may be death see RP* 35(*D*).

2. *The proceedings on each charge sheet* (*RP* 62) *after arraignment will be conducted as follows in the respective circumstances stated:*

I. If pleas to all charges are GUILTY, use Record Form B below.

II. If pleas to all charges are NOT GUILTY, use Record Form D on p [redacted] *3.*

III. If pleas to some charges are GUILTY and to other charges are NOT GUILTY and,

(a) Such mixed pleas occur when there are no alternative charges in the Charge Sheet, use Record Form C below. (*RP* 37(*A*).)

(b) Such mixed pleas occur in a set of two or more charges laid in the alternative, see RP 37 (*A*) *and fn* 2 *as to discretion of Court, (i) to try the accused on all such alternative charges as if he had pleaded Not Guilty thereto, or, (ii) to record the pleas as the findings of Court. After deciding between (i) and (ii), Court will proceed under foregoing instrs as may be appropriate to result of its decision. See MML p* 744 *Instrs* (2).

3. *As to responsibility of President to accused see RP* 59, 60(*C*); *powers and duties of JA see RP* 103; *duty of Prosecutor see RP* 60(*A*) (*B*); *duty and privileges of accused and Defending Offr see RP* 60(*C*), 87(*C*), 91, 92; *swearing and withdrawal of witnesses from Court see RP* 81, 82; *questioning of accused see RP* 80, 87(*C*), 92(*B*), *and of witnesses see RP* 83-85; *calling or re-calling of witnesses by Court etc see RP* 75-79, 86, 116; *use of Summary of Evidence at Trial see RP* 17(*E*) *fn* 6; *and responsibility of JA or Pres to record proceedings see RP* 94, 96.

RECORD FORM B—PROCEEDINGS ON PLEAS OF GUILTY TO ALL CHARGES.

B1. The President or JA, if any, complies with RP 35(B) by explaining to the accused the nature and meaning of the charge(s)(1), and that on his plea of Guilty there will be no regular trial but merely a consideration of the sentence to be awarded after he has been given an opportunity to make a statement in reference to the charge(s), call witnesses as to character and make an address in mitigation of punishment.(2)

(*1. RP 35 fn 3. 2. MML p 54 para 47.*)

B2. President to accused: The Court will now receive any statement you desire to make in reference to the charge(s).(1) If it appears from your statement that there are circumstances which indicate that you do not understand the effect of the plea of Guilty(2), or which show provocation or extenuation in respect of which in your interest the witnesses for the Prosecution should be examined(3), we shall advise you to change your plea to Not Guilty. In making a statement you will not be sworn or subject to cross-examination; and anything you say will not be used in evidence against you after you change your plea. If, however, it appears to the Court that your statement affects only the amount of punishment to which you are liable, you will not be advised to change your plea and you will be given an opportunity later to prove your statement by sworn testimony, if you so desire.(4)

President to accused: Do you wish to make a statement? Ans. No, sir.(5)

(*1. RP 37(B). 2. RP 37(D) fn 6. 3. RP 35(B) fn 5 para 3, MML p 54 para 47. 4. See para E3 of Record Form E. 5. Statement, if any, recorded per Notes.*)

B3. ~~The Court considers the accused's statement(s). The Court decides (not) to advise accused to change his (their) plea(s) of Guilty to Not Guilty on the charge(s). The accused is (are) so informed, and he (they) change(s) his (their) plea(s) on the charge(s). Part I of the Schedule is amended accordingly.~~

(*1. Court may be closed to consider the statement. Delete whole or part not used.*)

B4. On the charge(s) to which the plea(s) of Guilty is (are) not changed the President records finding(s) of Guilty in Part I of the Schedule.(1)

(*1. RP 35(B). If any plea(s) is (are) changed, use Record Form C or D as appropriate.*)

The prosecutor withdraws the second (alternative) charge.

B5. The Summary of Evidence is marked Ex A, initialled and read aloud by the President.(1)

(*1. If there is no Summary, or if it is inadequate, comply with RP 37(B). If there is any evidence inconsistent with any plea standing as Guilty, Court will advise accused to change such plea and, if changed to Not Guilty, try such charge(s) by use of paras D1 to D8 inclusive of Record Form D on p 3. RP 37(D).*)

B6. The accused having been found Guilty on one or more of the charges, the proceedings are concluded by using Record Form E on p 3.

RECORD FORM C—PROCEEDINGS ON MIXED PLEAS OF GUILTY AND NOT GUILTY.

C1. As to the charges on which accused pleaded NOT GUILTY the trial is continued by using paras D1 to D8 inclusive of Record Form D on p 3 before proceeding with C 2.(1)

(*1. RP 37(A) (E).*)

C2. The charges on which accused pleaded GUILTY are read to him (them) again, and the trial is continued by using paras B1 to B6 of Record Form B above.(1)

(*1. Under B5 such parts only of the Summary of Evidence are read as relate to the charges dealt with under C2. If any plea is changed to Not Guilty, trial thereon proceeds by complying with paras D1 to D8 inclusive in Record Form D on p 3 and making an appropriate record thereof on a separate sheet.*)

C3. The accused having been found Guilty on one or more of the charges, the proceedings are concluded by using Record Form E on p 3.

PRESIDENT OR JA WILL INITIAL ALL DELETIONS AND ALTERATIONS.

Pin here Loose Sheets of Record.

RECORD FORM D—PROCEEDINGS ON PLEAS OF NOT GUILTY TO ALL CHARGES.

D1. President to accused: Do you wish to apply for an adjournment on the ground that any of the rules relating to procedure before trial have not been complied with, and that you have been prejudiced thereby, or on the ground that you have not had sufficient opportunity to prepare your defence? Ans.....(1)

(*1. If "yes", see RP 39(A) for procedure. Statement or evidence, if any, is recorded per Notes.*)

D2. The Prosecutor makes (an) (no) opening address.(1)

(*1. RP 39(B), 60(A) (B), 90, 92(C) (D). Record address per Notes, subject to RP 95(C).*)

D3. The evidence for the Prosecution is taken.(1)

(*1. RP 39(C), 114, KR Can 555. Record evidence per Notes. As to Prosecutor giving evidence himself see RP 39(D) (E).*)

D4. The Prosecution is closed.(1) The Defending Offr submits that the evidence for the Prosecution does not establish a prima facie case against the accused on the.....charge(s).(2) The Court is closed, and considers the submission.(3) The Court is re-opened, and the President announces that the submission is disallowed on the.....charge(s), and allowed on the.....charge(s), and that, accordingly, the trial will proceed on the former, but the accused is (are) found Not Guilty on the latter charge(s).(4)

(*1. Delete remainder of this para, if submission not made. 2. Arguments on submission, answer and reply are recorded per Notes. 3. RP 40 fn 1. See MML p 72 paras 12-14 and p 81 para 42. 4. Delete part not used. If accused acquitted on all charges, use second alternative in para D8.*)

NB: If trial proceeds, accused must be allowed great latitude in making his defence, and the Court should not stop his defence solely on ground of irrelevance. (*RP 60(C), 114, 115.*)

D5. President to accused: You will now proceed with your defence.(1) You may, if you wish, give evidence yourself on oath as to the facts or your character or both, in which case you will be subject to cross-examination.(2) You may, however, make a statement without being sworn, and you will not be subject to cross-examination.(3) But a statement which could have been made on oath will not carry with the Court the same weight as sworn testimony.(4) You may call witnesses in your defence and as to character, whether you give evidence or make a statement or do neither.

President to accused: Do you wish to give evidence yourself as a witness, make a statement, or do neither? Ans.....Do you intend to call witnesses on your behalf? Ans.....Are they witnesses as to character only? Ans.....

(*1. RP 155. 2. RP 40(A), see 80(D). 3. RP 40 fn 10. 4. RP 40 fns 2, 9.*)

D6. Consequent on the answers recorded in para D5 the appropriate procedure for the defence is followed.(1)

(*1. RP 114, 115, 116. For procedure see Notes on back of Convening Order, CF A95. Evidence for accused as to his character should, if in his interest, be given before the finding. See RP 46(A) fn 1, 86(C). Note the further opportunity in para E3 of Record Form E. Record per Notes addresses, statement, evidence and any summing up by the JA under RP 42, 103(e).*)

D7. The Court is closed to consider the finding(s).(1) The finding(s) of the Court is (are) recorded in Part I of the Schedule.(2) The Court is re-opened.

(*1. RP 43, 117(A). See Notes in Part I of Schedule. 2. RP 44(A).*)

D8. The President announces the finding(s), if any, of Not Guilty, and states to the accused that the finding(s) of the Court on the.....charge(s), being subject to confirmation, will be promulgated later.(1)

Or, The President announces that the accused is found Not Guilty on all charges and is to be released forthwith, and that the proceedings are accordingly terminated. Part I of the Schedule is dated and signed.(2)

(*1. AA 54(3) (6), RP 45, 120(A). 2. AA 54(3), RP 45, 117. This alternative announcement is not applicable when there are pleas of Guilty outstanding and dealt with under Record Form B or C.*)

D9. The accused having been found Guilty on one or more of the charges, the proceedings are concluded by using Record Form E below.

RECORD FORM E—PROCEEDINGS ON CONVICTION BEFORE SENTENCE.

E1. President to accused: Do you wish to give evidence yourself or to call any witnesses as to your character?(1)

Ans No, sir.

(*1. If evidence has already been given by accused or his witnesses as to his character, delete this para. RP 37(C) fn 4, 46 fn 1. Accused and witnesses are sworn. Evidence recorded per Notes.*)

E2. The Prosecutor produces Statement(s) as to Character and Particulars of Service(1), and certified true copy (copies) of Conduct Sheet(s)(2), purporting to refer to the accused, which he submits to the Defending Offr for examination, and then to the Court for admission in evidence. The Court is satisfied that these documents refer to the accused, because (i) they purport to be signed in the manner required by AA 163(1) (g) (h), and (ii) they purport to refer to (a) soldier(s) having the same number, rank, name and corps as the accused. Admitted in evidence and marked Ex B, and Ex C respectively.(3)

(*1. MFB 355 or AFB 296. 2. MFM 6. 3. RP 46, KR Can 558. If above documents not produced, see RP 46 fn 1 para 1.*)

E3. President to accused: Do you wish to address the Court on the Statement(s) and Conduct Sheet(s), and in mitigation of punishment?(1) Ans Yes sir through my defending officer.(2)

(*1. RP 37(C), 46(D). 2. Address, if any, recorded per Notes. Court should permit accused or his witnesses to prove on oath anything here or previously stated which would affect the amount of punishment. RP 37(F) fn 7.*)

E4. The President states that the Court is closed to consider the sentence, and that the sentence to be awarded by the Court, being subject to confirmation, will not be announced, but will be promulgated later, and the proceedings in open court are accordingly terminated.(1)

(*1. AA 54(6), RP 120(A).*)

E5. The Court considers the sentence.(1) The President records the sentence in Part I of the Schedule, which is dated and signed by him and the JA, if any.(2)

(*1. When several accused tried separately see RP 71(b). One sentence only, comprised of the punishment or punishments laid down in AA 41, 44 and its proviso, is to be awarded to cover all charges in all charge sheets on which accused found guilty. RP 48. As to sentences see AA 44, 138, 182, RP 46-50, 69, 118, 119(A), KR Can 308, 330, 563-566, Overseas RO 309, 2323, MML p 60, 757-759. As to sentences assigned for civil offences by the law of England see AA 41(5), MML p 130. When accused already under sentence of imprisonment or detention see AA 44(18), 66(1), KR Can 564. 2. RP 50. As to release from arrest by Confirming Offr see KR Can 567. As to assembly and disposal of record after trial see instrs on back of Convening Order.*)

PRESIDENT OR JA WILL INITIAL ALL DELETIONS AND ALTERATIONS.

CHARGE SHEET

The accused, M.101015 Pte Douglas Eugene Fairbanks, 2 Cdn Corps Reinforcement Camp, a soldier of the Canadian Army Overseas is charged with:

First Charge
A.A. Sec. 18(4)

WHEN ON ACTIVE SERVICE STEALING PUBLIC PROPERTY

in that he

on or about
in the field on/13th and 14th April 44, while on duty at ADOS Dump, Horley, stole 3 prs boots, d.r., 2 leather jerkins, 3 jersey pullover sweaters, 1 pair gauntlets, 3 drab angola shirts, 3 pairs boots, ankle, 1 hand towel, 1 pair braces, 2 kit bags, 8 RCA badges, 1 pistol lanyard, 1 CDC badge, 1 RCE badge, 2 RCCS badges, 3 pairs socks all of said articles being public property.

Second Charge
(Alternative)
A.A. Sec. 40

WHEN ON ACTIVE SERVICE CONDUCT TO THE PREJUDICE OF GOOD ORDER AND MILITARY DISCIPLINE

in that he

in the field on or about 15th April 1944, was improperly in possession of the articles of public property above-mentioned in the particulars of the first charge.

C.S. Bolsby
(C. S. Bolsby) Lt-Col
Officer Commanding
2 Cdn Corps Rft Camp

In the Field
21 Apr 44

approved pursuant to KR(Can) 540 and overseas RO222 3 Mil Hqrs 2 Cdn Corps.
DJA

TO BE TRIED BY FIELD GENERAL COURT-MARTIAL

A Bruce Matthews
(A. Bruce Matthews) Brigadier
C C R A 2 Cdn Corps

In the Field
21 April 44

FIELD GENERAL COURT-MARTIAL

CFA95 (In lieu of AFA3)
40/PAS/1697 (2862)

(Whether the accused to be tried is under his comd or not, a FGCM may on application to him be convened by any offr of Cdn Army Overseas, or of any other force if authorized in law, in immediate comd of troops on active service, subject to RP 105(C) and restrictions imposed by appropriate authy. AA 49, 50, RP 104-107, 114. As to the duties and privileges of the Convening Offr in dealing with the application see MML Chap V paras 20 and 23, RP 87(b).

There should be a separate Convening Order for each person to be tried separately by the same Court. RP 71(C), 109. As to separate charge sheets see RP 62, and as to separate trial on charges in the same charge sheet see RP 108. As to two or more accused charged jointly see RP 16, 109.

As to reasons for showing (a) permanent or confirmed rank, and (b) appmt, A/rank or A/appmt, if any, see AA 182, 183, fns, KR Can 308, 328, 330.)

ACCUSED.

Number.	(a) Prmnt R.	(b) Appmt, A/R or A/Appmt.	Full Christian Names.	Surname.	Unit.
M.101015	Pte		Douglas Eugene	FAIRBANKS	2 Cdn Corps Rft Camp

CONVENING ORDER.

1. Whereas complaint has been made to me, the undersigned, that the person(s) named above as the accused, being subject to military law, has (have) committed the offence(s) set forth in the Charge Sheet(s) attached and on (*date*) 21 Apr 44 endorsed by me, (or by an offr of my staff for me), " To be tried by Field General Court-Martial ".

2. And whereas I am of opinion that it is not practicable that such offence(s) should be tried by an ordinary General Court-Martial ; (and that it is not practicable to delay the trial for reference to a superior qualified offr.)

(Delete part in brackets when not required for compliance with RP 105(C).)

3. I hereby convene a Field General Court-Martial to try the said person(s), and to consist of the Offrs appointed or detailed hereunder.

4. I am unable to appoint (a) three Offrs to form the Court, (b) a Fd Offr as President, for the reasons stated attached hereto.

(AA 49, RP 106(B), 107(A). Delete the whole or part, if not applicable.)

5. I also appoint as Judge-Advocate thereat the Offr mentioned hereunder.

(RP 106(E). Delete, if none appointed.)

PRESIDENT.

(Rank.)	(Must be named. RP 106.)	(Unit.)
Major	D. C. Shaw	2 Cdn MAC RCASC

MEMBERS.

(Rank.)	(Named or detailed. RP 106.)	(Unit.)
Captain	A. Landale	6 Cdn A/Tk Regt RCA
Captain	R. Craig	6 Cdn A/Tk Regt RCA

WAITING MEMBER.

(Rank.)	(Named or detailed, if any. RP 106.)	(Unit.)
Lieut	J. Lockwood	9 Cdn Dental Coy CDC

JUDGE-ADVOCATE.

(Rank.)	(Must be named, if any. RP 106.)	(Unit.)
Captain	D. G. Dean	CMHQ att H.Q 1 Cdn Army

On Active Service in the Fd

in England (*Country.*)

(Signed personally. RP 105 fn 2.) (A. Bruce Matthews) Brigadier (Rank.)

Date 21 Apr 44

Commanding CRA 2 Cdn Corps
Convening Officer.

CONVENING OFFR WILL INITIAL ALL DELETIONS AND ALTERATIONS

(See overleaf for oaths and notes for use on trial.)

22 Apr 44

I hereby certify that I have this day examined M101015, Pte Fairbanks, D.E., and in my opinion he is fit to undergo trial by Court Martial

M. Swalsky Capt

(M. Swalsky) Capt.
Med Offr,
2 Cdn Corps Rft Camp

OW.

Defending Officer in mitigation -

Pte Fairbanks has pleaded guilty. He has openly admitted his guilt throughout. He has shown himself willing when before his O.C. at the summary and here to make a clean breast of it. He willingly agreed to take the RSM and Capt. Montgomery to the farmer implicated Mr. Butler, in order to recover the goods. It is clear from the summary that all the goods have been recovered. In view of his willingness to admit guilt and to cooperate in securing the return of the goods, I ask for a lenient sentence. I think he has seen the error his ways and submit that fact in mitigation

Summary of Evidence in the case of M/10101[illegible] Pte Fairbanks, D.E. 2 Bde. Corps Rft. Coy, Canadian Army Overseas, charged with stealing public goods

The C.O. directs that the evidence be taken on oath.

First Witness: K67788 Cpl. Gray, R.H. 2 Bde. Corps Rft. Coy, Canadian Army Overseas, sworn states: I am, and have been previous to 15 April 44 employed as storeman in the Quarter Stores of this coy. On the morning of the 15 April 44 I was ordered to check the contents of several Kit bags, checked and listed the contents of two of the Kit bags and the accused Pte. Fairbanks, who was also present said that the Kit bags that I had checked were all that he was responsible for. The articles are in Kit bags and marked Exhibit A. The contents are as follows:

Boots, D.R. - 3 prs.
Jerkin, Leather - 1
Trousers, Jersey, pad over - 2
Gauntlets - 1 pr.
Shirts, angola, drab, - 2.
Boots, Ankle, - 3 prs.
Towels, hand - 1
" - 1 pr.
Braces, Kit, - 2.
Bags, Kit, - 8
Badges, Artillery - 1
Lanyards, pistol - 1
Badges, Dental, Corps - 1
" RCE. - 1
" RCCS - 2.

I know that the above listed articles are not on Fairbanks charge. These articles are not from our unit quarter stores.

The accused declines to cross examine his witness. A. The Kit bags referred to by the witness, produced, marked exhibit A. signed by me, and are kept in Quarter Stores.

Witness: K.F. Gray
Signature of Offr.

11

Second Witness.- Mr. J. Butler. Frogshole Farm.
Worth, Sussex, Sworn, States:

The Fairbanks, whom I identify as the accused: came down to my farm on Friday night 14th April 44 and he asked me if I wanted to buy a shirt ales a jerkin and three pairs of socks and two pull-overs. I identify the articles (marked Exhibit "B") as the ones that I bought from Mr. Fairbanks. I paid him 3 shelings a pair for the socks, ten shelings each for the pull-overs, fifteen shelings for the jerkin, and ten shelings for the shirt. The accused declines to cross-examine this witness.

The exhibits referred to by the witness produced marked exhibit "B" signed by me, and at. hearings. J. Butler (Signature of witness) (Signature of Officiating Commissioner)

Third Witness: Mr. Arthur Howe, Frogshole, Farmer, Sworn, States: Last Friday evening 14th April 44 between 6 and 7 o'clock two soldiers approached my house and I identify the accused as one of whom had some boots and socks. I bought two pairs of socks and one pair of boots from the soldier who was with Fairbanks. The accused told me the boots were £1-0-0 and 3 shelings for each pair of socks. I paid the money to the other soldier who was with the accused. J.H.

The

111

Third Witness - P34986 S/Cdr. Davidson, W. A.
ADOS, 1 Cdn. H.Q. Corps Tps. Ord. sworn, states:
Com Bde. Ordnance Warrant Officer at the ADOS
Dump in Horley. Dur the 11th April to 15 April, a working
party was supplied by 2 Cdn. Corps Rft. Camp to the
Dump to assist in breaking and sorting the stores for
units of our formation. At our Dump there are two
points: the "Return Stores Depot" and the Break Breaking
point at the main dump, where all clothing and equipment
is handled both in bulk and loose. Any member of a
working party would have access to only and all the
stores once they are broken and loose. It would be a
easy matter for anybody to take any articles from the
dump. The stores as exhibited and marked Exhibits "A" & "B"
are of a military pattern and are similar to those
handled by our Dump. No issues are made to any
individuals except quartermasters or their representatives
without authority from the ADOS office. To my knowledge
no authority was given to anyone of the working party
to take stores back either for the Q.M. of 2 Cdn. Corps
Reinf. Camp or for their own use.
The accused declines to cross-examine the witness.
W. A. Davidson
The articles referred to by the witness, produced, marked with the letters "A" & "B" respectively, and identified by the witness, are attached hereto. J. Theadore Hall (Signature of Off. taking Summary)

Fourth Witness: Captain D. S. Montgomery, 2 Cdn.
Corps Rft. Camp, Cdn. Army Overseas. Sworn, states:
I am and have been previous to 15 April 44 adjutant
and quartermaster of H.Q. 2 Cdn. Corps Rft. Camp.
On 16 April 44 the C.O. made a search and enquiry into a
theft and sale of goods for ADOS Dump, Horley. I detailed
for a work party of six men to the dump from the 11th
to the 15th inclusive. During the course of the enquiry
the Fairbanks and the Hasselock both of whom were in
the work party on April 14th, 13th and 14th admitted to the
C.O. that they had sold goods to some persons in the vicinity

14/ Later Pte. Fairbairn offered to produce goods which
they had hidden away and came back to the office a
short time later with five kit bags the contents of
which were checked and listed in the presence of the Rifle
and myself by Sgt. Gray, Cpl. 2/Lt. Thomson
The first three bags were checked and Pte. Fairbairn
admitted that the goods [illegible] were his own personal kit. The other
two which are marked Exhibit "A" were admitted by Pte.
Fairbairn to have been taken from ADOS dump, Horley
on the 13th and 14th April. He appeared to be about 6.30 hrs. on 16th Apr.
accompanied by Cpl. Dobson, Pte. Fairbairn went to his
escort went to Frogshole Farm, where I met Mr.
J. Butler who told me that he had bought a leather
jerkin, a shirt and three pairs of socks from a soldier.
He produced these articles of which I took possession
and now recognize as marked Exhibit "B". Mr.
Butler identified Fairbairn as the soldier who had
sold him the goods.
The accused declines to cross-examine the witness.
The articles referred to by the witness produced marked Exhibits
A and B, signed by me and at. tents.

J. Macdonald Lt.
Officer taking this
Summary of Evidence.

R. E. Mauleverer, Capt.

4

The accused has warned as follows:
"Do you wish to make any statement or to give evidence upon oath? You are not obliged to say anything or to give evidence unless you wish to do so, but whatever you say or any evidence you give will be taken down in writing, and may be given in evidence:

The accused: I desire to give evidence under oath.

The accused M.101015 Pte. Fairbanks, D.C. 2 Edn. Coys R.C. Coy, sworn states:
On morning of 1st April I was told I was on a work party, that day two men were left at the Dump. That day I was going to the Ordnance and the other four were put up to the main dump to stay at the Garage and drove a 60 cwt between the Garage and the stores. We were loading clothing and equipment with old and new. While we were loading the 60 cwt at the garage they put in the Kit bag and hid behind the garage. Of clothing & equipment that I loaded or fitted I should say about 1630 or 1700 lbs. I had two Kit bags full of equipment and clothing taken to the dump. The Pte. Roche came up to bring us back in the 8 cwt. I took the two Kit bags and put them behind the seat in the 8 cwt. ~~Nobody hidden~~ with. They were out of view of anybody else in the truck. When we got back to our Camp supper had long and the rest of

of the boys jumped out and took the kit bags to my hut. The Sgt. Maj. came into the hut and thereafter there was something wrong. Later on we had an idea that there would be a kit inspection in the morning and so I took the two kit bags out and hid them in a ditch west of the main camp area. After that I was brought up for office and told the balance that I'd give up the rest of the stuff. The R.S.M. and myself went out with me to where I hid the stuff.

D Fairbanks

I certify that R.P. 4 has been complied with. Taken by me in the Field in the presence and hearing of the accused this 18 day of April AD 1944.

D Thackeray Lt
Officer taking this Summary
of Evidence.

CERTIFIED TRUE COPY A/Secretary Dept

Exhibit "A" 2

M.F.M. 6
(A.F.B. 122)
40/P & S/136 (2637)

No. M101015 Name Fairbanks D.E. Sqn., Battery, or Company HQ Corps #13 District Depot Date of enlistment 23-11-42 R.C. Badges Service or Proficiency Pay

Date of last entry in Company Conduct Sheet 21 Dec 42 No. and date of last drunk Period not reckoning towards freedom from extra fine Sheet No. 1 Signature O.C. Company, etc. Character

Place	Date of offence	Rank	Cases of drunkenness	OFFENCE	Names of Witnesses	Punishment awarded	Date of award or of order dispensing with trial	By whom awarded	Remarks
Camrose Alta.	12Dec 42	Pte		Conduct to the prejudice of good order and Military discipline, in that he in the town of CAMROSE 12 Dec 42 was improperly dressed Sec 40 A.A. Also using threatening language to his superior officer, in that he at CAMROSE on 12 Dec 42when ordered by M58679 L/Cpl McCallum M.44th Cdn Pro Corps to button up his tunic, and greatcoat in accordance with Camp Orders, used threatening and abusive language Sec.8(2) A.A.	L/Cpl McCallum M. L/Cpl Urquhart documentary	14 days C.B.	18Dec42	G.K.Watts Major	

(P.T.O.)

Place	Date of offence	Rank	Cases of drunkenness	OFFENCE	Names of Witnesses	Punishment awarded	Date of award or of order dispensing with trial	By whom awarded	Remarks
A.16 C.I.T.C. Calgary, Alta.	25/3/43	Pte		Disobeying a lawful command given by his superior officer AA 9(2)	CSM MacDonald Cpl McBeath MM L/Cpl Earl TS	168 hrs detention	25/3/43	Lt.-col. JOR Evans	Maj AD Wilson
Calgary Alta	29Apr43	"		Certified no other entries		.....		Capt.	
1 CIRU	2Jun43	"		AA Sec15(1) AWL from 0745 hrs 2Jun43 until 1150 hrs 12 Jun43 Absent 10 days 4 hrs 5 min.	Documentary Cpl Wiseman	21 days F.P.2 days pay FR&I 149(1)(b)	15Jun43	Lt.-col. T.H.Hewitt	11days Pay Stoppage forcost apprehension
1 CIRU	24Jun43	"		WOAS conduct to the prejudice of good order and military discipline in that he failed to answer defaulters parade at 1245 hrs 24 Jun 43 A.A. Sec. 40	Sgt White J.	3 days C.B.	25/6/43		
Field	26Jul43	"		WOAS AWL from 2230 hrs 26 Jul 43 until 2335 hrs 26 Jul 43(1 hr 5 min) A.A.15(1)	L/Cpl Gordon	Forf 3 dys pay FR&I 149(2)	27 Jul 43	Lt.-col. C.S. Bolsby	
Field	3Feb 44	"		WOAS AA Sec 15(1)in that he was AWL from 0010 hrs3Feb44 until giving himself up at0930 hrs 3Feb44(9 hrs 20Min)	Cpl Burns JJ	Forf 1 dys pay	4Feb44	Lt.-col. C.S. Bolsby	

.CERTIFIED TRUE COPY H Headquarters, Regt. 22 Apr 44

No. M101015 Name Fairbanks D.E. Sqn., Battery, or Company | Corps | Date of enlistment 23/11/42 | O.C. Badges | Service or Proficiency Pay | M.F.M. 6 (A.F.H. 122) 40/P & S/136 (2637)

Date of last entry in Company Conduct Sheet 4Feb44 | No. and date of last drunk | Period not reckoning towards freedom from extra fine | Sheet No. 2 | Signature O.C. Company, etc. | Character

Place	Date of offence	Rank	Cases of drunkenness	OFFENCE	Names of Witnesses	Punishment awarded	Date of award or of order dispensing with trial	By whom awarded	Remarks
Field	3Feb44	Pte		WOAS A.A. Sec 40, conduct to the prejudice of good order and military discipline in that he at approximately 0010 hrs 3 Feb44 did take without permission W.D. Vehicle No CZ 232550	Cpl Burns J.J.	27 Days F.P.	4 Feb 44	Lt.-col C.S. Bolsby	

(P.T.O.)

Exhibit "B"

M.F.B. 355
22M—5-41 (572-3)
H.Q. 1772-39-620
A.F.B. 296

STATEMENT AS TO CHARACTER AND PARTICULARS OF SERVICE OF ACCUSED

Number	Rank	Name	Regiment (or unit)
M101015	Pte	Fairbanks, D.E.	2 Cdn Corps Rft Camp

1. The following is a fair and true summary of the entries in the Service and General / Regimental and Squadron, Battery Conduct sheets or Company Conduct sheets of the accused, exclusive of convictions by a Court-Martial or a Civil Court, of summary awards under Section 47 of the Air Force Act / Army Act and of cases in which trial has been dispensed with.

	Within last 12 months		Since enlistment or appointment	
For	AWL, A.A.15(1)	4 times		times
For	Sec.40 Conduct etc.	2 times	A.A. Sec.40	1 times
For		times	A.A. 9(2)	1 times
For		times	A.A. 8 (2)	1 times

Number of instances of gallantry or distinguished conduct Nil

or,

There are no entries in the conduct sheets of the accused. N.A.

NOTE.—If the charge is for drunkenness, the entries for drunkenness must be stated separately.

2. The accused has not been previously convicted

or,

Previous convictions of the accused by a court-martial or a civil court, of summary awards under Section 47 of the Air Force Act / Army Act and dispensations with trial under A.F.A. 73 / A.A. 73 are set out in the Schedule annexed to this statement.

3. The accused is not under sentence at the present time.

or,

The accused at the present time is under sentence for N.A. beginning on the N.A. day of N.A.

4. The accused has been in confinement awaiting trial on the present charges, for Nil days in civil custody, and ~~five~~ seven days in ~~xxxxxx~~ military custody, making a total of ~~five~~ seven days in custody, of which None days were spent in hospital.

5. The present age of the accused according to his record of service is / attestation paper is 20 years

6. The date of his commission specified in his record of service is / attestation / attestation paper N.A.

7. The service which the accused is allowed to reckon towards discharge is 1 Yr 2 Mo.

8. The accused is entitled to reckon service for the purpose of determining his pension, etc.

9. The accused is in possession of or entitled to no ~~xxxxx~~ military decoration, or ~~xxxxxx~~ military reward (or is in possession of or entitled to). State ~~xxxxxxxx~~ military decoration or reward.

10. (If the accused is a warrant officer.) The accused before he was made a warrant officer last held / Air Force the regimental rank of N.A.

11. (In the case of an officer.) The accused holds in the Royal Canadian Air Force the rank of Permanent Force unit
..... dated A/Cn ....., and in his regiment (or corps), the rank of
..... dated .....

12. The accused has served as a non-commissioned officer continuously, without reduction, to the present date:—

..... Date of promotion.

In the rank of ..... years.

In the rank of A/Cn years.

In the rank of ..... years.

NOTE.—If any matter in any of the above paragraphs cannot be stated from the Regimental books, the paragraph must be struck through.

SCHEDULE

Of convictions by a court-martial or civil court, of summary awards under Section 47 of the Army Air Force Act, and of cases in which trial has been dispensed with of accused, Number M101015 Rank Pte Unit
Name Fairbanks, D.E. of 2 Cdn Corps Rft Camp Regiment

NOTE.—A verbatim extract from the regimental books stating these convictions and dispensations with trial must be inserted.

Description of Court by which tried	Date and Place of Trial	Charge upon which convicted	Sentence of the Court	Punishment Remitted

I hereby certify that the foregoing schedule of convictions and dispensations with trial is a true extract from the regimental books in my custody.

Signed this 22nd A/Cn day of April 1944
A/Maj, since, Dept. Adjt. 2CCRC

The above statement (with the schedule of convictions and of cases in which trial has been dispensed with) is read, marked ..... signed by the president, and annexed to the proceedings.

H.Q.C. 55-F-885 CONFIDENTIAL

DEPARTMENT OF NATIONAL DEFENCE—OTTAWA, CANADA

SUBJECT

FIELD GENERAL COURT-MARTIAL

FAIRBANKS, JOHN ALFRED B-119[illegible]

CENTRAL REGISTRY	DATE	P.A. OR S.F.	INITIALS	REFERRED TO	FOR	INITIALS	DATE
				(If purpose for which referred cannot be expressed on one line, enter here "With Minute")			2-12-46

CONFIDENTIAL
H.Q.C. 55-F-885

OVERSEAS COMBINED

NOTICE.

1. Files should be retained no longer than absolutely necessary. If a file is frequently needed at short intervals, it is better to S.F. it for two or three days than keep it out of Central Registry indefinitely. This ensures it being completed and kept in order, and also gives other officers an opportunity to see same.
2. Central Registry should be notified whenever a file is passed direct to another branch.
3. All enclosures thereto should bear the official file number.

PASS THIS FILE IN ENVELOPE

SCHEDULE.

PART I. PLEA(S), FINDING(S) AND SENTENCE.

Accused: B.119358 Pte John Aldred FAIRBANKS, 10 Cdn Repat Dep

Charge. (Insert "alternative" where applicable.)	Plea. (See Instrs p 2.)	Finding. (See note below.)	(Space for use as required for further charges, accused charged jointly, special findings, etc.)
1st AA Sec 40	NOT GUILTY	GUILTY	
Alternative 2nd AA Sec 40	NOT GUILTY	NOT GUILTY	
3rd AA Sec 11	NOT GUILTY	NOT GUILTY	
4th			
5th			
6th			

(Note: As to findings for lesser offences see AA 56, RP 44; findings on alternative charges see MML p 483 fn 4 para 2, RP 44; special findings see RP 44 and MML p 753, and in loss of kit see RP 44 fn 6.)

~~At present under sentence for~~ ..... ~~beginning on (date)~~ .....(1)

(1. Insert sentence being served, or delete, if not applicable. See RP 46(A). Information should be found on MF B355 or AF B296.)

Time in confinement awaiting present trial—a total of 21 days, of which Nil days were spent in hospital.(1)

(1. See RP 46(A) fn 2. Information should be found on MF B355 or AF B296 admitted in evidence under E2.)

Sentence Awarded by the Court:

To forfeit all ordinary pay for a period of forty five (45) days.

(Sgd) ..... 21 DEC/45 (Sgd) ..... President. (RP 45, 50.)

Judge-Advocate, if any. Date awarded.

(See back of Convening Order as to assembly and disposal of record after trial.)

PART II. MINUTE WHERE CONFIRMATION RESERVED. (AA 54(5), RP 120(F), MML p 760.)

Date ..... (Sgd) ..... Commanding .....

PART III. DECISION OF CONFIRMING OFFR ON FINDING(S) AND SENTENCE.

(For duties and powers see AA 54, 57, RP 37(D) fn 6, 46(A), 51-56, 120, MML pp 759-761, KR Can 567-577. Acquittals require no confirmation and cannot be revised: AA 54(2). Sending back finding or sentence for revision by Court: AA 54(2), RP 120(G). If not confirmed, accused may be tried again: AA 157, MML p 64. Minute of confirmation or non-confirmation may be altered before promulgation: RP 53, MML p 65. Quashing after promulgation: KR Can 573. Duties and powers of reviewing offrs: AA 57, 57A, RP 53A, 54. The Confirming Offr must sign here personally. AA 172 fn 1.)

My decision on the finding(s) and sentence set forth in Part I is:

Confirmed

~~I direct that the accused be not committed to prison or detention barracks until further orders.~~(1)

(1. AA 57A. Delete if not used.)

(Sgd) .....

Date 31 Dec 45

Commanding ..... Dep CRU.

Confirming Officer.

PART IV. PROMULGATED AND EXTRACTS TAKEN. (RP 53, KR Can 576, 577.)

Accused.	Date.	Signature of Offr.
B 119358 Pte John Alfred FAIRBANKS - CIC (10 Cdn Repat Dep)	Promulgated and extracts taken for Pt II DO 3 d/4 Jan 46.	(A.C. Ross) Lt-Col. Comd 1 Wing, 10 Cdn Repat Dep

ALL DELETIONS AND ALTERATIONS WILL BE INITIALLED.

RECORDED AT CMHQ IN AE 169 1 5X-90

RECEIVED 1946

FIELD GENERAL COURT-MARTIAL

CFAS8 (In lieu of AFA3) 40/P & S/1693 (S144) 4/38B

Convened by Order of Brig K.G. Blackader, DSO, MC, ED, Comd "D" Gp CRU dated 17 Dec 45

ACCUSED.

(As to the trial of two or more charged jointly see RP 16, 71, 109. As to reasons for showing (a) permanent or confirmed rank, and (b) apptmt, A/rank or A/apptmt, if any, see AA 182, 183, fns, KR Can 308, 328, 330.)

Number.	(a) Prmnt R. (b) Apptmt, A/R or A/Appmt.	Full Christian Names.	Surname.	Unit.
B.119358	Pte	John Alfred	FAIRBANKS	"CIC" 10 Cdn Repat Dep

PROCEEDINGS REVIEWED

QBR Swanwick Capt

14 Jan 46

REVIEWING OFFICER, JAG BRANCH

PROCEEDINGS OF TRIAL.

Held in the Fd in (country) ENGLAND on (date(s)) 21 DEC 45

RECORD FORM A—OPENING PROCEEDINGS AND ARRAIGNMENT.

A1. The President, Members, ~~waiting Member, JA, if any, and Offrs under instr, if any,~~ assemble, and the Court is closed.

(PRINTED MATTER, NOT IN ITALICS FOR GUIDANCE, WILL BE DELETED, IF NOT USED OR APPLICABLE, AND INITIALLED BY PRES OR JA. The Schedule referred to throughout is on p 4. Citations do NOT include all relevant fmn ROs. For guidance on procedure when a variation in this form arises, see form for GCM in MML pp 741 to 759. A brief record of such variation will be made and given a number having reference to appropriate or preceding para number herein. See back of Convening Order, CF A95, for oaths and instrs on how to record addresses, evidence, etc, which instrs are hereafter called "Notes". As to general provisions for conducting the trial see AA 53, RP 56, 63-70, 73, 74, 94, 103, 119, 132.)

A2. The President initials and lays before the Court the Convening Order and Charge Sheet(s) attached thereto.(1) The Court is satisfied that it is properly convened and constituted(2), accused is ~~(are)~~ amenable to military law, and each charge discloses an offence.(3)

(1. As to use of Summary of Evidence see RP 17 fn 6. 2. AA 49, 50, RP 105-107. 3. RP 11-13, 23, 24.)

A3. The Court is opened. The accused is ~~(are)~~ brought before the Court. At 1600 hours trial commences.

A4. The Prosecutor produces a Medical Certificate that accused is ~~(are)~~ fit to undergo trial by court-martial.(1) ~~The Prosecutor informs the Court that accused elected to be tried by court-martial instead of being dealt with summarily by the CO.(2)~~

(1. KR Can 557. 2. AA 46(B), RP 60 fn 1. For effect see KR Can 563(c). Delete, if not applicable.)

A5. President to accused: ~~Do you object to~~ ..... as interpreter? Ans .....

~~The Interpreter is sworn.(1)~~ Do you object to £100409 Cpl O'NEILL, JF as shorthand writer? Ans NO SIR.

The shorthand writer is sworn.(1)

(1. RP 72. Delete, if none employed.)

A6. The Convening Order and names of the President and Members of the Court are read to the accused.(1) President to accused: Do you object to be tried by me as President or by any of the Members of the Court?

Ans NO SIR.(2)

(1. RP 110. 2. If no objection, waiting member retires. RP 68(B). If objection, see procedure AA 51, RP 25, 71, 18, MML p 742.)

A7. The President, Members, ~~JA, if any, and Offrs under instr, if any,~~ are sworn.(1) The following are the ranks, names and units of the offrs comprising the Court, etc:

President	LT-COL	D.L. REDMAN VD	HQ CRU
Member	CAPT	A.B. LAVOIE	7 CDN REPAT DEP
Member	LIEUT	F.F. ALPEN	11 CDN REPAT DEP
~~Judge-Advocate~~			
Prosecutor	CAPT	R.L. CHANTLER	10 CDN REPAT DEP
Defending Offr	CAPT	F.W. FRASER	10 CDN REPAT DEP

Questions by President: Is the Prosecutor a lawyer? Ans NO. Is the Defending Offr a lawyer? Ans NO.(2)

(1. RP 26, 27, 109, 111. List of offrs under instr will be returned separately with proceedings for information of Conv Offr.)
(2. If Pros a lawyer and Def Offr not, accused is entitled to an adjournment when RP 69 (B) and fn 2 were not followed. See D! p 2.)

A8. The accused ..... before arraignment make(s) (no) [a] plea.(1)

(1. If a special plea is made for separate trial on one or more charges (RP 62(E), 108), or as to the jurisdiction of the Court (RP 34, 35(A), 113), or in bar of trial (RP 36), or as to accused's mental fitness to stand trial (AA 130, RP 37), or by one of several accused charged jointly to be tried separately (RP 16, 71), such plea, the addresses made in support or against, the evidence, if any, and finding are recorded per Notes. For forms of record see references in fns to RsP cited. Insert in A8 rank and name of the accused making the plea.)

A9. The accused is ~~(are)~~ arraigned ~~(separately)~~ on all charges in the charge sheet.(1) The accused does ~~(do)~~ not object to any charge.(2) There is no amendment to be made to the Charge Sheet.(3) The President records the pleas in Part I of the Schedule.

(1. RP 31, 112. See para 1 of Instrs p 2. When more than one Charge Sheet see RP 62; when several accused to be tried separately see RP 71(C), and use separate copies of CF A96 to record proceedings. 2. RP 32, RP 33. If otherwise, delete and make appropriate record per Notes.)

A10. The Court ~~(is closed and)~~ considers the Instrs on Procedure after Arraignment at top of p 2. The proceedings are continued on Record Form D

PRESIDENT OR JA WILL INITIAL ALL DELETIONS AND ALTERATIONS.

INSTRUCTIONS ON PROCEDURE AFTER ARRAIGNMENT.

1. *The accused may not plead or be found Guilty on more than one of two or more charges laid in the alternative.* (RP 37(A).) *As to withdrawal of alternative charges by Prosecutor see RP 35(C). No other charge can be withdrawn for any reason without authy from Convening Offr. If Convening Offr concurs, Court may accept plea of Guilty to lesser, etc, offence.* (RP 44(H).) *Accused may change a plea of Not Guilty to Guilty during trial.* (RP 38.) *As to refusing to plead or not pleading intelligibly see RP 35(A). As to plea when sentence may be death see RP 35(D).*

2. *The proceedings on each charge sheet* (RP 62) *after arraignment will be conducted as follows in the respective circumstances stated :*

I. If pleas to all charges are GUILTY, use Record Form B below.

II. If pleas to all charges are NOT GUILTY, use Record Form D on p 3.

III. If pleas to some charges are GUILTY and to other charges are NOT GUILTY and,

(a) Such mixed pleas occur when there are no alternative charges in the Charge Sheet, use Record Form C below. (RP 37(A).)

(b) Such mixed pleas occur in a set of two or more charges laid in the alternative, see RP 37 (A) and fn 2 as to discretion of Court, (i) to try the accused on all such alternative charges as if he had pleaded Not Guilty thereto, or, (ii) to record the pleas as the findings of Court. After deciding between (i) and (ii), Court will proceed under foregoing instrs as may be appropriate to result of its decision. See MML p 744 Instrs (2).

3. *As to responsibility of President to accused see RP 59, 60(C); powers and duties of JA see RP 103; duty of Prosecutor see RP 60(A) (B); duty and privileges of accused and Defending Offr see RP 60(C), 87(C), 91, 92; swearing and withdrawal of witnesses from Court see RP 81, 82; questioning of accused see RP 80, 87(C), 92(B), and of witnesses see RP 83-85; calling or re-calling of witnesses by Court, etc, see RP 75-79, 86, 116; use of Summary of Evidence at Trial see RP 17(E) fn 6; and responsibility of JA or Pres to record proceedings see RP 94, 96.*

RECORD FORM B—PROCEEDINGS ON PLEAS OF GUILTY TO ALL CHARGES.

B1. The President or JA, if any, complies with RP 35(B) by explaining to the accused the nature and meaning of the charge(s).(1), and that on his plea of Guilty there will be no regular trial but merely a consideration of the sentence to be awarded after he has been given an opportunity to make a statement in reference to the charge(s), call witnesses as to character and make an address in mitigation of punishment.(2)
(1. RP 35 fn 3. 2. MML p 54 para 47.)

B2. President to accused : The Court will now receive any statement you desire to make in reference to the charge(s).(1) If it appears from your statement that there are circumstances which indicate that you do not understand the effect of the plea of Guilty(2), or which show provocation or extenuation in respect of which in your interest the witnesses for the Prosecution should be examined(3), we shall advise you to change your plea to Not Guilty. In making a statement you will not be sworn or subject to cross-examination ; and anything you say will not be used in evidence against you after you change your plea. If, however, it appears to the Court that your statement affects only the amount of punishment to which you are liable, you will not be advised to change your plea and you will be given an opportunity later to prove your statement by sworn testimony, if you so desire.(4)

President to accused : Do you wish to make a statement ? Ans.....(5)
(1. RP 37(B). 2. RP 37(D) fn 6. 3. RP 35(B) fn 5 para 3, MML p 54 para 47. 4. See para E3 of Record Form E. 5. Statement, if any, recorded per Notes.)

B3. The Court considers the accused's statement.(1) The Court decides (not) to advise accused to change his (their) plea(s) of Guilty to Not Guilty on.....charge(s). The accused is (are) so informed, and he (they) change(s) his (their) plea(s) on.....charge(s). Part I of the Schedule is amended accordingly.
(1. Court may be cleared to consider the statement. Delete whole or part not used.)

B4. On the charge(s) to which the plea(s) of Guilty is (are) not changed the President records finding(s) of Guilty in Part I of the Schedule.(1)
(1. RP 35(B). If any plea(s) is (are) changed, use Record Form C or D as appropriate.)

B5. The Summary of Evidence is marked Ex....., initialled and read aloud by the President.(1)
(1. If there is no Summary, or if it is inadequate, comply with RP 37(B). If there is any evidence inconsistent with any plea standing as Guilty, Court will advise accused to change such plea and, if changed to Not Guilty, try such charge(s) by use of paras D1 to D8 inclusive of Record Form D on p 3. RP 37(D).)

B6. The accused having been found Guilty on one or more of the charges, the proceedings are concluded by using Record Form E on p 3.

RECORD FORM C—PROCEEDINGS ON MIXED PLEAS OF GUILTY AND NOT GUILTY.

C1. As to the charges on which accused pleaded NOT GUILTY the trial is continued by using paras D1 to D8 inclusive of Record Form D on p 3 before proceeding with C 2.(1)
(1. RP 37(A) (E).)

C2. The charges on which accused pleaded GUILTY are read to him (them) again, and the trial is continued by using paras B1 to B5 of Record Form B above.(1)
(1. Under B5 such parts only of the Summary of Evidence are read as relate to the charges dealt with under C2. If any plea is changed to Not Guilty, trial thereon proceeds by complying with paras D1 to D8 inclusive in Record Form D on p 3 and making an appropriate record thereof on a separate sheet.)

C3. The accused having been found Guilty on one or more of the charges, the proceedings are concluded by using Record Form E on p 3.

PRESIDENT OR JA WILL INITIAL ALL DELETIONS AND ALTERATIONS.

Pin here Loose Sheets of Record.

RECORD FORM D—PROCEEDINGS ON PLEAS OF NOT GUILTY TO ALL CHARGES.

D1. President to accused : Do you wish to apply for an adjournment on the ground that any of the rules relating to procedure before trial have not been complied with, and that you have been prejudiced thereby, or on the ground that you have not had sufficient opportunity to prepare your defence ? Ans. NO - SIR .....(1)
(1. If "yes", see RP 39(A) for procedure. Statement or evidence, if any, is recorded per Notes.)

D2. The Prosecutor makes (an) (no) opening address.(1)
(1. RP 39(B), 60(A) (B), 90, 92(C) (D). Record address per Notes, subject to RP 95(C).)

D3. The evidence for the Prosecution is taken.(1)
(1. RP 39(C), 114, KR Can 555. Record evidence per Notes. As to Prosecutor giving evidence himself see RP 39(D) (E).)

D4. The Prosecution is closed.(1) The Defending Offr submits that the evidence for the Prosecution does not establish a prima facie case against the accused on the 1st 2nd & 3rd charge(s).(2) The Court is closed, and considers the submission.(3) The Court is re-opened, and the President announces that the submission is disallowed on the 1st and 2nd charge(s), and allowed on the 3rd charge(s), and that, accordingly, the trial will proceed on the former, but the accused is (are) found Not Guilty on the latter charge(s).(4)
(1. Delete remainder of this para, if submission not made. 2. Arguments on submission, answer and reply are recorded per Notes. 3. RP 40 fn 1. See MML p 72 paras 12-14 and p 81 para 42. 4. Delete part not used. If accused acquitted on all charges, use second alternative in para D8.)
NB : If trial proceeds, accused must be allowed great latitude in making his defence, and the Court should not stop his defence solely on ground of irrelevance. (RP 60(C), 114, 115.)

D5. President to accused : You will now proceed with your defence.(1) You may, if you wish, give evidence yourself on oath as to the facts or your character or both, in which case you will be subject to cross-examination.(2) You may, however, make a statement without being sworn, and you will not be subject to cross-examination.(3) But a statement which could have been made on oath will not carry with the Court the same weight as sworn testimony.(4) You may call witnesses in your defence and as to character, whether you give evidence or make a statement or do neither.

President to accused : Do you wish to give evidence yourself as a witness, make a statement, or do neither ?
Ans. Give Evidence Do you intend to call witnesses on your behalf ?
Ans. NO Sir Are they witnesses as to character only ? Ans. Yes Sir
(1. RP 115. 2. RP 40(A), see 80(D). 3. RP 40 fn 10. 4. RP 40 fns 2 & 3.)

D6. Consequent on the answers recorded in para D5 the appropriate procedure for the defence is followed.(1) NOTE ATT
(1. RP 114, 115, 116. For procedure see Notes on back of Convening Order, CF A95. Evidence for accused as to his character should, if in his interest, be given before the finding. See RP 46(A) fn 1, 86(C). Note the further opportunity in para E1 of Record Form E. Record per Notes addresses, statement, evidence and any summing up by the JA under RP 42, 103(e).)

D7. The Court is closed to consider the finding(s).(1) The finding(s) of the Court is (are) recorded in Part I of the Schedule.(2) The Court is re-opened.
(1. RP 43, 117(A). See Notes in Part I of Schedule. 2. RP 44(A).)

D8. The President announces the finding(s), if any, of Not Guilty, and states to the accused that the finding(s) of the Court on the 1st charge(s), being subject to confirmation, will be promulgated later.(1)
~~Or, The President announces that the accused is found Not Guilty on all charges and is to be released forthwith, and that the proceedings are accordingly terminated. Part I of the Schedule is dated and signed.~~(2)
(1. AA 54(3) (b), RP 45, 120(A). 2. AA 54(3), RP 45, 117. This alternative announcement is not applicable when there are pleas of Guilty outstanding and dealt with under Record Form B or C.)

D9. The accused having been found Guilty on one or more of the charges, the proceedings are concluded by using Record Form E below.

RECORD FORM E—PROCEEDINGS ON CONVICTION BEFORE SENTENCE.

E1. President to accused : Do you wish to give evidence yourself or to call any witnesses as to your character ?(2)
Ans. NO-SIR
(1. If evidence has already been given by accused or his witnesses as to his character, delete this para. RP 37(C) fn 4, 46 fn 1. Accused and witnesses are sworn. Evidence recorded per Notes.)

E2. The Prosecutor produces Statement(s) as to Character and Particulars of Service(1), and certified true copy (copies) of Conduct Sheet(s)(2), purporting to refer to the accused, which he submits to the Defending Offr for examination, and then to the Court for admission in evidence. The Court is satisfied that these documents refer to the accused, because (i) they purport to be signed in the manner required by AA 163(1) (g) (h), and (ii) they purport to refer to (a) soldier(s) having the same number, rank, name and corps as the accused. Admitted in evidence and marked Ex B and Ex C respectively.(3)
(1. MFB 355 or AFB 296. 2. MFM 6. 3. RP 46, KR Can 558. If above documents not produced, see RP 46 fn 1 para 1.)

E3. President to accused : Do you wish to address the Court on the Statement(s) and Conduct Sheet(s), and in mitigation of punishment ?(1) Ans. Pay BOOK's NOTE-ATT (2)
(1. RP 37(C), 46(D). 2. Address, if any, recorded per Notes. Court should permit accused or his witnesses to prove on oath anything here or previously stated which would affect the amount of punishment. RP 37(F) fn 7.)

E4. The President states that the Court is closed to consider the sentence, and that the sentence to be awarded by the Court, being subject to confirmation, will not be announced, but will be promulgated later, and the proceedings in open court are accordingly terminated.(1)
(1. AA 54(6), RP 120(A).)

E5. The Court considers the sentence.(1) The President records the sentence in Part I of the Schedule, which is dated and signed by him and the JA, if any.(2)
(1. When several accused tried separately see RP 71 (D). One sentence only, comprised of the punishment or punishments laid down in AA 41, 44 and its proviso, is to be awarded to cover all charges in all charge sheets on which accused found guilty. RP 48. As to sentences see AA 44, 138, 182, RP 46-50, 69, 118, 119(A), KR Can 308, 330, 563-566, Overseas RO 309, 2323, MML p 60, 757-759. As to sentences assigned for civil offences by the law of England see AA 41(5), MML p 130. When accused already under sentence of imprisonment or detention see AA 44(1B), 68(1), KR Can 564. 2. RP 50. As to release from arrest by Confirming Offr see KR Can 567. As to assembly and disposal of record after trial see instrs on back of Convening Order.)

PRESIDENT OR JA WILL INITIAL ALL DELETIONS AND ALTERATIONS.

CHARGE SHEET

The accused, B.119358 Private John Alfred FAIRBANKS, Canadian Infantry Corps, attached to No. 10 Canadian Repatriation Depot, a soldier of the Canadian Army Overseas, is charged with:

FIRST CHARGE — WHILE ON ACTIVE SERVICE, Conduct to the prejudice of good order and military discipline,

Section 40 Army Act

in that he,

In the Field, on the Epsom-Leatherhead Road, Windsor Sheet 114 MR630774, on the evening of 14 November 1945 drove WD vehicle CM4202845 at such an excessive rate of speed when proceeding around a curve as to become involved in an accident, thereby causing damage to the said vehicle to the estimated amount of £362-0-0, and in which B.70469 Pte. Clarke, J.L., B.126923 Pte. Cuthbertson, H.D., D.63263 Pte. Larouche, J., D.115557 Pte. McCool, J.L., D.124718 Pte. Morin, B., L.105482 Gnr. Nicholson, G.G., A.105339 Pte. Olendar, S.W. and F.64671 Pte. Sweeney, B.C. were injured.

SECOND CHARGE Alternative — WHILE ON ACTIVE SERVICE, Neglect to the prejudice of good order and military discipline,

Section 40 Army Act

in that he,

In the Field, on the Epsom-Leatherhead Road, Windsor Sheet 114 MR630774, on the evening of 14 November 1945 did so negligently drive WD vehicle CM4202845 as to lose control of same and become involved in an accident, thereby causing damage to the said vehicle to the estimated amount of £362-0-0 and in which B.70469 Pte. Clarke, J.L. B.126923 Pte. Cuthbertson, H.D., D.63263 Pte. Larouche, J., D.115557 Pte. McCool, J.L., D.124718 Pte. Morin, B., L.105482 Gnr. Nicholson, G.G., A.105339 Pte. Olendar, S.W. and F.64671 Pte. Sweeney, B.C. were injured.

THIRD CHARGE — WHILE ON ACTIVE SERVICE, Neglecting to obey "Mechanical Transport Drivers' Regulations, Canadian Army Overseas",

Section 11 Army Act

in that he,

In the Field, while driving WD vehicle CM4202845 from Epsom to Leatherhead on the evening of 14 November 1945 permitted more than two persons to ride in the cab of the said vehicle contrary to Section 40 para (a) of "Mechanical Transport Drivers' Regulations, Canadian Army Overseas" as authorized in Overseas Routine Order 3510 dated 7 June 1943.

(J. Rumele) Lt-Col.
Comd
10 Cdn Repat Dep

IN THE FIELD
14 DEC 45

TO BE TRIED BY FIELD GENERAL COURT MARTIAL

(K G Blackader) Brig
Comd D Gp CRU

IN THE FIELD
17 Dec 45

FIELD GENERAL COURT-MARTIAL

(Whether the accused to be tried is under his comd or not, a FGCM may on application to him be convened by any offr of Cdn Army Overseas, or of any other force if authorized in law, in immediate comd of troops on active service, subject to RP 105(C) and restrictions imposed by appropriate authy. AA 49, 50, RP 104-107, 114. As to the duties and privileges of the Convening Offr in dealing with the application see MML Chap V paras 20 and 23, RP 87(B).

There should be a separate Convening Order for each person to be tried separately by the same Court. RP 71(C), 109. As to separate charge sheets see RP 62, and as to separate trial on charges in the same charge sheet see RP 108. As to two or more accused charged jointly see RP 16, 109. As to reasons for showing (a) permanent or confirmed rank, and (b) appmt, A/rank or A/appmt, if any, see AA 182, 183, fns, KR Can 308, 328, 330.)

ACCUSED.

Number.	(a) Prmnt R.	(b) Appmt, A/R or A/Appmt.	Full Christian Names.	Surname.	Unit.
B.119358	Pte		John Alfred	FAIRBANKS	10 Cdn Repat Dep CRU

CONVENING ORDER.

1. Whereas complaint has been made to me, the undersigned, that the person(s) named above as the accused, being subject to military law, has ~~(have)~~ committed the offence(s) set forth in the Charge Sheet(s) attached and on (date) 17 Dec 45 endorsed by me, ~~(or by an offr of my staff for me)~~, "To be tried by Field General Court-Martial".

2. And whereas I am of opinion that it is not practicable that such offence(s) should be tried by an ordinary General Court-Martial; ~~(and that it is not practicable to delay the trial for reference to a superior qualified offr.~~

(Delete part in brackets when not required for compliance with RP 105(C).)

3. I hereby convene a Field General Court-Martial to try the said person(s), and to consist of the Offrs appointed or detailed hereunder.

4. ~~I am unable to appoint (a) three Offrs to form the Court, (b) a Fd Offr as President, for the reasons I have attached hereto.~~

(AA 49, RP 106(B), 107(A). Delete the whole or part, if not applicable.)

5. ~~I also appoint as Judge Advocate thereat the Offr mentioned hereunder.~~

(RP 106(E). Delete, if none appointed.)

PRESIDENT.

(Rank.)	(Must be named. RP 106.)	(Unit.)
Lt-Col	D L REDMAN, VD	HQ CRU

MEMBERS.

(Rank.)	(Named or detailed. RP 106.)	(Unit.)
Captain	To be detailed by Comd	7 Cdn Repat Dep
Lieutenant	To be detailed by Comd	11 Cdn Repat Dep

WAITING MEMBER.

(Rank.)	(Named or detailed, if any. RP 106.)	(Unit.)
Lieutenant	To be detailed by Comd	10 Cdn Repat Dep

JUDGE-ADVOCATE.

(Rank.)	(Must be named, if any. RP 106.)	(Unit.)

On Active Service in the Fd

in England (Country.)

Dat: 17 Dec 45

K G Blackader

(Signed personally. RP 105 fn 2.)

(K G Blackader) Brig

Commanding D Gp CRU

Convening Officer.

Brigadier (Rank.)

CONVENING OFFR WILL INITIAL ALL DELETIONS AND ALTERATIONS

4/38A CPA 95 (Ex Sten of AFA 3) 40/P & S/1607 (6145)

(See overleaf for oaths and notes for use on trial.)

Medical Officer's Certificate. 40/25
K.R. (Can.), para 557.

I certify that I have this morning examined No. B.11.2358
Pte. FAIRBANKS V.A. of I.D.C.R.D.
and in my opinion, he is fit to undergo trial by Court Martial.

Station.....
Date 21 DEC. 45 (Sgd) Capt.
(Medical Officer)

(Canadian Reinforcement Units Routine Order No. 3, para 27, d/6 Jan 42)

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PLEA OF MITIGATION

On behalf B 119358 Pte Fairbanks JA.

Sirs:

In making plea of mitigation on behalf Pt Fairbanks, I would like to point out to the court his Army Record.

Pte Fairbanks enlisted on 11 Nov 43 at the age of 18. He came Overseas in July 1944 and joined the SD&G in Sep 44. He served with them through France and Holland as a DR until he was injured on 20 Dec 44. He was knocked down and run over by a carrier when standing on a roadside checking vehicles over a bridge.

Pte Fairbanks has been a driver and a DR ever since he came Overseas and he has not previously had an accident. His reputation as a driver previous to this accident has always been good.

There is one charge on his MFM 6 under section 40 for reckless driving, which needs clarification. Pte Fairbanks driving in the Camp Area under the Camp Speed limit passed a vehicle in which Lt-Col A. C. Ross, CO "1" Wing 10 Cdn Repat Dep was riding in, and Col Ross considered that Pte Fairbanks had crowded his vehicle unduely. If this was so, it was quite unintentional and the lightness of the punishment METED out will illustrate to the court that it was not a serious offence.

Pte Fairbanks is married and has a wife and a child at home in Canada. He has been working hard doing his job here, looking forward to the time when he can get home to them. He has been a willing worker and is regarded highly by all with whom he has come into contact. He is not a chronic reckless driver, and does not heedlessly or intentionally break Army Regulations.

May his punishment might be in the nature of a forfeiture of pay rather than detention.

TRIAL OF

B.119358 Pte FAIRBANKS, J.A. ----- 10 Cdn Repat Dep

PROSECUTION

FIRST WITNESS

Lieut R.A. Harfield, Assistant Transport Officer, 10 Cdn Repat Depot, sworn, states:-

Q. On the night of 14 - 15 Nov 45, were you called out to visit the scene of an accident of one of the vehicles attached to this Unit?
A. Yes, sir.
Q. Will you tell the Court about it?
A. When there I made a sketch of the scene of the accident.

The Prosecutor hands the witness the sketch. The Defending Officer said "I object to the sketch. In the first place, it is not accurate and not according to scale and, in the second place, I understand that the measurements were taken the day following the accident and the drawing was not made until a good many days later." The President said in view of the objection of the Defending Officer the sketch would not be admitted in evidence.

On the night of 14 - 15 Nov 45 I was called by Major A.J. Geisler at 0100 hrs. As the result of what he said to me he took me to a place on the Epsom-Leatherhead Road, MR 630774, Windsor Sheet No. 114, and when I arrived there I found that there had been an accident to Canadian Vehicle No CM.4202845, a Ford Chad used by the Auxiliary Services and attached to this Depot for repairs and maintenance. My first reaction was to enquire about the passengers. I was told that they had been cared for and taken to hospital. I found that the vehicle had come to rest on top of a 4-ft brick wall, right side up at right angles to the road. With the aid of a 60 cwt we pulled the Chad off the wall onto the road. With the aid of the Police Constable that was there we looked over the road and checked for skid marks. The next day, on 15 Nov 45, I was there at 0930 hrs and I returned again at approximately 1400 hrs and then checked the marks on the road. I paced off the measurements from the beginning of the curve, from the 30 MPH speed limit sign to where the vehicle left the road and found it to be approximately 81 paces. At 51 paces into the curve the first tire pressure marks commenced three feet into the road from the edge of the road, that is 51 paces from the 30 MPH sign. The first tire pressure marks continued for 11 paces where they came to a place 4 inches from the left curb and then continued for 5 more paces where they came 2½ feet from the curb. That is where the tire pressure marks stopped. For another approximately 7 paces there were no marks at all, then the slide marks started. The pressure marks were made by the tires and the slide marks were made by the rubbing of canvas and steel where the vehicle turned on its side. The slide marks continued for 15 paces across the sidewalk which was approximately a 4-ft sidewalk with a curb about 4 or 5 inches high and they continued to the bottom of a broken down stone wall. The vehicle came to rest on the top of this wall, right side up and the force of its landing buckled the chassis so as to shorten the wheelbase. The top of the vehicle was absolutely wrecked. I do not know the condition of the wall before this accident but the wall was broken. The top and the body of the car were badly smashed but the windshield was intact. From the place where the vehicle was resting the height of the wall sloped downwards, starting in its rise from the level of the sidewalk and it is very probable that the vehicle slid up that incline to the 4-ft height where it was resting.

FIRST WITNESS (CONT'D)

The Witness says "This is a certified true extract from "M.T. Drivers' Regulations, Canadian Army Overseas." Then he says"and this is "M.T. Drivers' Regulations, Canadian Army Overseas."

THE REGUATIONS ARE MARKED EXHIBIT 1 BY THE COURT

Witness says "This is Overseas RO 3510, dated 7 Jun 43, which authorizes the use of the M.T. Drivers' Regulations.

OVERSEAS RO 3510 IS MARKED EXHIBIT 2 BY THE COURT

Q. Can you tell us the classification of this Ford Chad?
A. It is classified as a 5-passenger Chad. A 5-passenger Chad has the driver's seat and one seat in the back with a space in the back for luggage or radio sets and in the 7-passenger you have an extra seat instead of the space.
Q. In the Summary you speak of wood, canvas, cotton and steel causing the slide marks. What part of the Chad includes cotton and canvas?
A. The canvas and cotton came off the top and there is also cotton and wood underneath in different parts of the body.
Q. Was it a right angle curve?
A. It could be classified as a right angle curve although I would say it was more of a sweeping curve.
Q. Is it a dangerous curve?
A. Driving myself I would say it would be.
Q. Are there any signs to warn drivers?
A. Yes, a 30 MPH sign.
Q. What was the condition of the tires on this particular car?
A. I am not quite certain, but I would say the condition was good.
Q. How much tread was on the tires?
A. I am not prepared to say, sir.
Q. What was the condition of the roadway that night?
A. Clear and dry.
Q. Do you know whether there had been a moon that night?
A. I don't remember.
Q. Do you think a Chad turns over more easily than a station wagon?
A. I don't think there is any difference.

QUESTIONS BY COURT

Q. Mr. Harfield, from your experience as a transport officer, what do you understand to be the cab of a vehicle?
A. The cab of a vehicle, in my opinion, refers to the driver's seat, the co-drivers seat and the front compartment of a truck or lorry.
Q. Will you tell us what the effect of a shock absorber is on a vehicle going around a curve?
A. The work that the shock absorber does is that it is attached to the frame of the vehicle and it controls the up and down motion of the car more than the rolling. The up and down is the side to side motion and it acts as a snubber to restrict the up and down motion.
Q. Can you tell the Court what a stabiliser does?
A. A stabiliser is attached to the frame and also to the axle and it controls the side to side roll of the vehicle.
Q. Were you familiar with this vehicle before the accident?
A. Only when it came in for a 406 each month.
Q. Was it in a good state of repair.
A. It was roadworthy.
Q. Would the absence of a shock absorber be enough to keep a chad off the road?
A. No, sir, the absence of a shock absorber does not make a Chad unroadworthy.
Q. But it does make it less?
A. To my mind, no; others, yes.

FIRST WITNESS (CONT'D)

Q. Have you Chads here now without shock absorbers.
A. Yes, sir. It is hard to get them. It is not enough to keep a car off the road.
Q. Did it have a stabiliser?
A. Yes, it had one.
Q. How many are on a Chad normally?
A. One, sir.

CROSS-EXAMINED

Q. Could the accident that occurred that night have been caused by a defect of the vehicle?
A. It is possible.
Q. Can you tell us whether or not that vehicle has had any repairs to its steering gear just previous to the accident?
A. That I cannot say because the Log Book went with the vehicle to the Workshop and we were not able to locate it
Q. In connection with your answers to the questions on the third charge, you were not prepared to the questions on the Chad had a cab?
A. No, I am not prepared to say.

The Witness says "This is a Part I Order of 10 Canadian Repatriation Depot CA(O) No 125, dated 17 Dec 45.

THE ORDER IS MARKED EXHIBIT 3 BY THE COURT

IN THE OPINION OF THE COURT IT IS NOT NECESSARY TO COMPLY WITH RP 83(B).

SECOND WITNESS

Major A.J. Geisler, 2 i/c "1" Wing, No 10 Canadian Repatriation Depot, sworn, states:

This is a certified extract from the MFM 4 of the accused, which says that he was qualified as a Driver i/c Class III on 14 Feb 44.

THE EXTRACT IS MARKED EXHIBIT 4 BY THE COURT

Q. On 14 - 15 Nov 45, did you see a vehicle after it was in an accident?
A. Yes, sir, at map reference 63107745, Windsor Sheet 114.
Q. What was the number of the vehicle involved?
A. Canadian Military Vehicle CM.4202845.
Q. What did you see?
A. I saw a badly damaged vehicle perched on top of a brick wall at right angles to the road and half a dozen men or so strewn all over the place. The front of the vehicle was facing the road. Some of the men were standing, some were sitting. There were none lying down then. When I saw this vehicle I stopped and the driver and I backed the car up and put the lights on the accident. Just about this time a H.U.P. and a 60 cwt arrived with a lot of soldiers in them and they began milling around. I looked for the driver of the vehicle and found that it was Private Fairbanks, who I know by sight and asked how many were in the vehicle. He said "seven" so I made certain that all seven were accounted for. We searched the vehicle and laid some of the chaps down and covered them with blankets or whatever we could get handy. In the meantime a civilian vehicle had drawn up with a lady doctor, or at least she said she was a doctor, and a policeman was on the scene. Someone said he had ordered an ambulance from Leatherhead Emergency Hospital and the lady doctor looked at the people but she did not seem to be worried at all, except for the two chaps lying down. She wanted to move them immediately but I would not permit it until the

SECOND WITNESS (CONT'D)

ambulance arrived. When the ambulance arrived we put one chap on a stretcher and one chap sat in the ambulance. The lady doctor or another civilian with a car took, as far as I could figure out, two soldiers to a hospital. After making sure that there were no other casualties I took Fairbanks and two other lads to our own RAP. Before leaving I got the Log Book and Work ticket, making sure that it was authorized. I made sure that Fairbanks was sober and he was and I proceeded to the RAP. We then returned to the scene with Lieut Harfield and a crew, brought the vehicle in and cleaned up the road.

Q. What sort of a curve was it?
A. Just before you approach that curve you bear left. There is a sharp right turn there and the road is banked the wrong way. It has rather a high crown for a curve and after you cross it there is a tendency for a car to pull to the left. I would imagine at 30 MPH there would be quite a pull on that corner, but I am no judge of anything like that.
Q. How do you know that Fairbanks was driving this vehicle at the time of the accident?
A. I asked one of the lads who the driver was and he said Fairbanks, so I walked over to him and asked him if he had been driving and he said "yes".
Q. And you recognize Fairbanks now?
A. Yes, sir.
Q. How many injured soldiers did you see at the scene of the accident?
A. I could not tell an injured person from an uninjured unless I see blood, but I would say three.

NO CROSS-EXAMINATION

IN THE OPINION OF THE COURT IT IS NOT NECESSARY TO COMPLY WITH RP 83(B).

THIRD WITNESS

Supervisor M.I. Liversidge, Canadian Auxiliary Services, employed at No 1 Wing 10 Canadian Repatriation Depot, sworn, states:-

Q. Did you use WD Vehicle CM.4202845 on the night of 14 - 15 Nov 45?
A. I did.
Q. By whom was the trip that vehicle took on 14 Nov authorized?
A. The trip was authorized by myself to go to Epsom to pick up CSM Harrison who was in Epsom. He was supposed to be there at 2345 hours that night.
Q. Have you ever instructed your driver to pick up soldier passengers returning to camp?
A. Yes, sir. I encourage it and have the drivers stop and pick them up.
Q. Do you recognize the driver to whom you gave your instructions that night?
A. Yes, sir (indicates accused). His name is Pte Fairbanks.

CROSS-EXAMINED

Q. How long has Pte Fairbanks been driving for you?
A. Since about the beginning of August.
Q. What has been your experience with him as a driver?
A. My experience has been that he is more than an excellent driver. He is very dependable and trustworthy, has never shown carelessness and is an extremely careful driver.
Q. Has he any inclination to speed?
A. No, sir, very definitely not, to my knowledge.

THIRD WITNESS (CONT'D)

Q. What was the condition of this Chad in your opinion?
A. I have ridden in it quite a lot and I consider that mechanically it is in good condition. I have had some doubts as to the suspension although all Chads roll from side to side. I have ridden in others and while they all rolled it is not to the same extent.
Q. How much tread was on the tires?
A. The tires were in fairly good shape.

IN THEOPINION OF THE COURT IT IS NOT NECESSARY TO COMPLY WITH RP 83(B).

FOURTH WITNESS

Captain P.B. Ros e, RCAMC, Medical Officer, 1 Wing, 10 Canadian Repatriation Depot, sworn, states:-

At approximately 0130 hrs on 15 Nov 45 I saw Pte Fairbanks, Pte Clarke and Gnr Nicolson in the treatment room at the RAP. The three were quite shaken up. Fairbanks and Clarke had nothing obviously wrong except very superficial bruises. Nicolson had a laceration of the forehead which the orderly had taken care of at the time. I was told that others had been taken to Leatherhead Hospital and I went down with the ambulance as it is just a small hospital and when I got down there they had already been removed to Leatherhead Emergency Hospital where they have a resident staff. There will be no permanent disability to the three I examined.

Q. Did you see any other people the next morning?
A. The next morning at about nine o'clock Pte Morin presented himself on sick parade and he had been treated at the hospital the night before suffering from contusion to the inner side of the left ankle. There will be no permanent disability there. About 1130 that morning I went down to the Leatherhead Emergency Hospital where I saw Pte McCool, Pte Cuthbertson, Pte Larouche and Pte Olender. Pte Larouche and Pte Olender were still unconscious and I could not speak to them. Pte Cuthbertson was in bed fairly comfortable, complaining about a sore back and Pte McCool had suffered minor lacerations to the forehead. Cuthbertson and Olender were taken to 24 Canadian General Hospital that afternoon. So far as Olender and Larouche are concerned there will be no permanent disability. Cuthbertson's X-rays showed some wedging of the 6th thoracic vertebra and compression fracture of the 8th thoracic vertebra. From his hospital diagrams it is stated there might be permanent disability. I saw Pte Sweeney on the 17th. He had been treated at Leatherhead Emergency Hospital the same time as Pte Morin was. There will be no permanent disability there.

NO CROSS-EXAMINATION

IN THE OPINION OF THE COURT IT IS NOT NECESSARY TO COMPLY WITH RP 83(B).

FIFTH WITNESS

L.105482 Gnr Nicolson, G.G., No 1 Cinema Section HQ CRU, attached to 1 Canadian Repatriation Depot, sworn, states:-

Q. Did you go to Epson on the evening of 14 Nov 45?
A. Yes, sir.
Q. Will you tell the Court how it was you happened to go and what happened?
A. I was in the hut about twenty to twelve when Pte Fairbanks asked me if I would go down to Epsom with him as he had a

FIFTH WITNESS (CONT'D)

duty run run to do. We went straight to Epsom and in Epsom we stopped at the Clock Tower but his passenger was not there, so we picked up some other men. In between Epsom and Ashtead we were going around a corner and I was knocked out. The next thing I remember was getting out of the wreckage and Maj Geisler took me and Pte Fairbanks and one other soldier back to the RAP here and we had to stay for the night for medical observation.

Q. You spoke of going around a curve and then you were knocked out. Who was driving the vehicle at the time?
A. Pte Fairbanks.
Q. Do you recognize him?
A. Yes, sir (indicates accused).
Q. How fast was he going?
A. My impression was that we were not going too fast.
Q. How many were in the front seat?
A. Three of us sir.
Q. Were they crowded?
A. No, sir.
Q. Do you know how many were in the vehicle at the time?
A. No, sir.
Q. Between the time you stopped in Epsom to pick up these soldier passengers and the time you were knocked out, did the vehicle stop for any reason?
A. No, sir, once we picked up the passengers, we came straight through.
Q. Were you injured in any way?
A. I got a kind of a scrape on the head, but that was all there was to it.

CROSS-EXAMINED

Q. You are sure you did not stop once on your way coming back?
A. Yes, I am sure.

IN THE OPINION OF THE COURT IT IS NOT NECESSARY TO COMPLY WITH RP 83(B).

SIXTH WITNESS

D.115557 Pte McCool, J.L., 1 Wing, 10 Canadian Repatriation Depot, sworn, states:-

Q. Did you get a ride on a military vehicle on the evening of 14 Nov 45?
A. Yes, sir. We were standing at the corner in Epsom and the station wagon pulled up and the driver asked us if we wanted a lift back to camp. He said only a few of us could get in. We got in and started off down the road. One fellow wanted to go out to water his dog so they stopped the car. I could not see whether he got back in or not and we proceeded and came to a corner where the accident happened.
Q. Was there any careless driving?
A. I figure there was no careless driving.
Q. Were you hurt?
A. I had a scratch on the forehead and my elbow was stiff for a couple of days but it is all right now.
Q. Who was driving the vehicle?
A. I did not know at the time of the accident, except what I have been told.
Q. How many were in the front seat?
A. There may have been three. I am not sure as I was in the back. I think there were four besides myself in the back. I had a chap on my knee and was sitting right up against the door.

NO CROSS-EXAMINATION

IN THE OPINION OF THE COURT IT IS NOT NECESSARY TO COMPLY WITH RP 83(B).

SEVENTH WITNESS

F.64671 Pte Sweeney, B.C., 1 Wing, No 10 Canadian Repatriation Depot, sworn, states:-

Q. Did you get a ride in a military vehicle on 14 Nov 45?
A. Yes, sir.
Q. Who was driving?
A. Pte Fairbanks (indicates accused). After I got in the vehicle we went along and I felt the vehicle start to roll sideways.
Q. How fast was it going when it started to roll?
A. At a safe speed, 35 or 40 miles an hour.
Q. Had you no feeling that the speed was too high?
A. No, sir.
Q. How many were in the vehicle all together?
A. Approximately 8 or 9.
Q. How many were in the front seat?
A. I could not say from where I was sitting in the back next to a door.
Q. Was someone on your knee?
A. Someone was sitting in front of me.
Q. Was someone sitting beside you?
A. Yes, sir.
Q. Did the car stop from the time you got into it and the time of the accident?
A. I don't remember.
Q. Did you go to a hospital?
A. I was taken to a hospital with a small cut on the side of my head and a little one behind my ear. I had nothing wrong outside of them.

CROSS-EXAMINATION

Q. You don't know actually how fast the vehicle was going?
A. Only to my estimation.
Q. Did you feel it was going at a safe speed?
A. Yes, sir.

IN THE OPINION OF THE COURT IT IS NOT NECESSARY TO COMPLY WITH RP 83(B).

EIGHTH WITNESS

D.124718 Pte Morin, B., 1 Wing No 10 Canadian Repatriation Depot, sworn, states:-

Q. Did you get a ride in a military vehicle in the evening of 14 Nov 45:-
A. Yes, sir.
Q. Who was the driver of that vehicle?
A. I do not know because I had been doing a little drinking that night. I remember that when I got in I fell asleep and the next thing I remember I was lying on the ground.
Q. Where did you sit?
A. I sat in the back seat and somebody was sitting on my knee.
Q. Were you injured in any way?
A. Yes, sir, I went to the Leatherhead Emergency Hospital. There was a scratch on my right ankle.

NO CROSS EXAMINATION

IN THE OPINION OF THE COURT IT IS NOT NECESSARY TO COMPLY WITH RP 83(B).

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NINTH WITNESS - 8 -

B.70469 Pte Clarke, J.L., 9 Canadian Repatriation Depot, sworn, states:-

Q. On 14 Nov 45 what was your job?
A. Driving a tea wagon for Canadian Auxiliary Services at 10 Repat.
Q. You are not stationed here now?
A. No, sir, I am at 9 Cdn Repat.
Q. On 14 Nov 45 did you go for a ride in a military vehicle late in the evening?
A. Yes, sir.
Q. Will you tell us about it?
A. Around midnight Pte Fairbanks came into the hut and asked me if I wanted to go to Epsom with him. I was sitting in the rear seat. Major and I went with him. We saw some soldiers and stopped and In Epsom we could not find the passenger so turned around and started back. We proceeded on back to camp. A number got asked if anybody wanted a lift back to Leatherhead. On
Q. in the vehicle and we proceeded on back to camp. A number got the way back the car turned over.
A. How fast was the vehicle travelling?
Q. I would say we were travelling between 35 and 40 miles an hour. We were on the main Leatherhead-Epsom highway which is a good broad road.
A. Did you have any impression that you were travelling too fast?
Q. I had no impression that we were travelling too fast.
A. What was the first sensation you noticed before it turned over?
Q. I did not notice anything until it had turned over. I was sitting in the rear seat and someone was sitting on my knee when the vehicle turned over. That is all I remember. I woke up and I was a few feet away from the vehicle. At that time we gave what aid we could to those that were hurt badly. I just had minor scratches and returned to camp with Major Geisler.
A. Who was driving at the time of the accident?
Q. Pte Fairbanks.
A. Do you recognize him now?
Yes, sir (indicates accused).

CROSS-EXAMINED

Q. Did you know anything about this Chad before you took it?
A. A couple of days before the accident we took off the right shock absorber. Facing the vehicle it would be the right shock absorber. We were getting another but the arm had broken. We were getting them in the stores here and there was no use of the old one being on the vehicle as it was broken.
Q. What effect would that have on a Chad going around a curve?
A. I have been a driver myself in the Army and I found that it would effect some Chads differently than others, depending on the front springs. Some are weak and some are different. It could have an effect on a car. The shock absorber sort of keeps a car from going sideways but when you have no shock absorber the car would go further one way than if you had one.
Q. Might that cause a Chad to turn over?
A. There is a possibility that that might have been what caused the Chad to turn over.
Q. How many were there in the vehicle?
A. I would not state any definite number. I was sitting in the rear centre and somebody was sitting on my knee.
Q. How many were in the front seat?
A. I could not say, sir.

NINTH WITNESS

B.70469 Pte Clarke, J.L., 9 Canadian Repatriation Depot, sworn, states:-

Q. On 14 Nov 45 what was your job?
A. Driving a tea wagon for Canadian Auxiliary Services at 10 Repat.
Q. You are not stationed here now?
A. No, sir, I am at 9 Cdn Repat.
Q. On 14 Nov 45 did you go for a ride in a military vehicle late in the evening?
A. Yes, sir.
Q. Will you tell us about it?
A. Around midnight Pte Fairbanks came into the hut and asked me if I wanted to go to Epsom with him to pick up a Sergeant-Major and I went with him. I was sitting in the rear seat. In Epsom we could not find the passenger so turned around and started back. We saw some soldiers and stopped and asked if anybody wanted a lift back to camp. A number got in the vehicle and we proceeded on back to Leatherhead. On the way back the car turned over.
Q. How fast was the vehicle travelling?
A. I would say we were travelling between 35 and 40 miles an hour. We were on the main Leatherhead-Epsom highway which is a good broad road.
Q. Did you have any impression that you were travelling too fast?
A. I had no impression that we were travelling too fast.
Q. What was the first sensation you noticed before it turned over?
A. I did not notice anything until it had turned over. I was sitting in the rear seat and someone was sitting on my knee when the vehicle turned over. That is all I remember. I woke up and I was a few feet away from the vehicle. At that time we gave what aid we could to those that were hurt badly. I just had minor scratches and returned to camp with Major Geisler.
Q. Who was driving at the time of the accident?
A. Pte Fairbanks.
Q. Do you recognize him now?
A. Yes, sir (indicates accused).

CROSS-EXAMINED

Q. Did you know anything about this Chad before you took it?
A. A couple of days before the accident we took off the shock absorber. Facing the vehicle it would be the right shock absorber. The arm had broken. We were getting another but at the time we could not get them in the stores here and there was no use of the old one being on the vehicle as it was broken.
Q. What effect would that have on a Chad going around a curve?
A. I have been a driver myself in the Army and I found that it would effect some Chads differently than others, depending on the front springs. Some are weak and some are different. It could have an effect on a car. The shock absorber sort of keeps a car from going sideways but when you have no shock absorber the car would go further one way than if you had one.
Q. Might that cause a Chad to turn over?
A. There is a possibility that that might have been what caused the Chad to turn over.
Q. How many were there in the vehicle?
A. I would not state any definite number. I was sitting in the rear centre and somebody was sitting on my knee.
Q. How many were in the front seat?
A. I could not say, sir.

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NINTH WITNESS CONTINUED

Q. From where you were sitting you could not see the speedometer?
A. No, sir.
Q. And you would not know the actual speed?
A. No, sir.
Q. Did it seem to be a safe speed to you?
A. Yes, sir.

IN THE OPINION OF THE COURT IT IS NOT NECESSARY TO COMPLY WITH RP 83(B).

TENTH WITNESS

A.105339 Pte Olender, S.W., 1 Wing 10 Cdn Repat Depot, sworn, states:-

Q. Did you get a ride in a military vehicle late in the evening of 14 Nov 45?
A. Yes, sir. A few of us were standing at a corner in Epsom waiting for a truck and a station wagon came up and asked if anybody wanted to go to camp. I don't know the exact number of soldiers who were there but three got in the front seat and the rest in the back. We stopped once and I felt the car sway and then I don't remember anything until I was getting up off the road and went to the hospital along with Pte Larouche and Pte Cuthbertson.
Q. What injuries did you have?
A. I lost a tooth and had a sore ear and 13 stitches on the top of my head.
Q. When the car stopped and someone got out before the accident, was anything said?
A. I don't remember anything.
Q. Do you know why the car stopped?
A. I did not know what it was all about. We just stopped and then we started going.
Q. What about the speed?
A. I am always nervous of the vehicle I am in so as far as I am concerned I could not judge the speed.
Q. What impression did you have? You said in the summary "we were going quite fast". What did you mean?
A. About 40 miles an hour.
Q. Did you consider the driver to be driving safely?
A. The driver had this happen once before and I am always nervous in a car no matter whether they are driving fast or slow.
Q. Where were you sitting?
A. I was sitting on McCool's knee in the back on the righthand side.
Q. Could you see the speedometer?
A. No, sir.

NO CROSS-EXAMINATION

ELEVENTH WITNESS

D.63263, Pte Larouche J., Regimental Police, 1 Wing, 10 Canadian Repatriation Depot, sworn, states:-

Q. Did you get a ride in a military vehicle in the evening of 14 Nov 45?
A. Yes, sir.
Q. Who was the driver?
A. I don't know sir.
Q. Do you recognize anybody in this room?
A. No, sir.
Q. Tell us what happened?
A. We were standing on a corner at Epsom at night and a car pulled up and asked us if we were going back to camp. There were about 7 or 8 of us. About two miles down the road he stopped to light a cigarette. After that, a bit later, the car turned over.

ELEVENTH WITNESS (CONT'D)

Q. After the car stopped before the accident, did anyone get out of the car?
A. Yes, sir.
Q. Did you know who got out?
A. No, sir.
Q. Did he get back in?
A. No, sir
Q. How many were riding in the front seat at the time of the accident?
A. Two beside the driver.
Q. How many in the back seat?
A. Five.
Q. Were you injured in any way?
A. I was hurt on the back of the head and was unconscious.
Q. In the Summary of Evidence do you recall saying "We took two or three corners on what I felt like two wheels."?
A. That is correct, sir.
Q. Were you travelling fairly fast when this happened?
A. Yes, sir, fairly fast.
Q. And you definitely felt that the car was going around two or three curves on what felt like two wheels?
A. Yes, sir, it felt that way.
Q. You also say in that statement that you became scared?
A. Because I was shot between the eyes once and I am always nervous when I am riding in a car.
Q. But at the time when this one lad got out of the car, you decided to stay in because you felt the driver would get you home safely. Is that correct?
A. Yes, sir.

CROSS-EXAMINED

Q. On that night had you been drinking?
A. Yes, sir.
Q. How much?
A. Quite a bit.
Q. You mention that you are always nervous. What are your PULHEMS?
A. S3 since I was shot.
Q. In view of the fact that you had been drinking, sitting in the back seat and are of a nervous temperament, can you be absolutely sure of what you felt?
A. To tell you the truth I am nervous in any cars at all.
Q. So your opinion as to whether the car was being recklessly driven is very uncertain?
A. To tell you the truth I was not sober and I don't really know for sure.

QUESTIONS BY COURT

Q. You say the car stopped between the starting-up point and the scene of the accident. Did you hear anything as to why that man got out?
A. I heard a guy say that he had to water.
Q. And he did not get back in?
A. No, sir.

The Prosecutor said that the witness Capt C.W. Pallen was not available to give evidence, nor the witness Capt G.J.A. Kirkpatrick. The Defending Officer said he did not require the presence of either of them for the purpose of cross-examination.

THE PROSECUTION IS CLOSED

SUBMISSION BY THE DEPENDING OFFICER

The Prosecution has failed to make a prima facie case against the accused on any of the charges, for the following reasons: None of the witnesses have proven that he was driving at an excessive rate of speed. There is no witness to show at what speed he was travelling. The evidence of Mr Harfield although it shows what happened after the accident took place, does not have any bearing on the three charges, and in connection with the third charge, the evidence does not show that there are any definite orders in MT Regulations and the front seat of a Chad is not a cab. Two Witnesses, Ptes Olender and Larouche, have both admitted that they are normally nervous when they are driving in a car, whether the car is going fast or slow, and the other witnesses intimated in their evidence that the car was not going too fast and was not being driven recklessly. Any deduction that could be made from what happened at the accident by Mr Harfield can only be only theories and as they cannot be proven I feel that they should not be considered in evidence. I would also remind the Court that the witness Clarke said that a day or so before the shock absorber on the front left axle had been removed because it had a broken arm and was useless. This may have been the deciding factor in causing the accident. It was shown in the evidence of Major Geisler that the accused had not been drinking. He was on a duty run and he is not to be blamed at all for picking up soldiers in Epsom and bringing them back to camp. That is a decent and proper thing to do.

REPLY TO THIS SUBMISSION BY THE PROSECUTOR

From the evidence you have heard tod ay, that is the fact in running that curve the car caused skid and slide marks on the pavement and did not negotiate that curve, would indicate that the driver must have been driving negligently in that he did not negotiate the curve, or that he was driving at an excessive rate of speed. The skid marks, as Mr Harfield's evidence gave you, started some 3 feet from the curb. The tire pressure marks continued for 11 paces where they came to a place 4 inches from the curb. They then continued for approximately another five paces to a place 2½ feet from the curb where they then stopped. About 7 paces from the last tire pressure marks, slide marks caused by wood, canvas, cotton and steel were evident on the road and sidewalk. There were no marks between the last tire pressure marks and where the slide marks began. The slide marks commenced on the edge of the road and partially on the sidewalk and continued for about 15 paces across the sidewalk to where the vehicle came to rest on top of the brick wall. Regarding the Shock Absorber, Mr Harfield, who is Assistant Transport Officer, gave you his honest opinion on whether the shock absorber might or might not cause a car to roll or turn over and that the effect it has on a car is simply to reduce the up and down (not lateral) motion. He al so told you that there was a stabiliser on that car which controlled its side-to-side sway. Also, you have heard seven witnesses besides the driver of the vehicle and you have heard ano ther witness say that a chap named Cuthbertson went to the hospital with him which tells you that there were nine o ccupants of the vehicle. You have Pte Fairbank's qualifications, his MFM 4, and as he is a qualified Driver i/c he knows the effect of additional weight, and he also knows the number of passengers that are allowed to drive in vehicles that he is told to drive. You have heard Mr Harfield say that the vehicle was a 5-passenger Chad and the seating of a 5-passenger Chad is 2 in the front seat and 3 in the back seat.

THE COURT CLOSED

THE COURT RE/OPENED

The President announces that the Court allows the submission with respect to the 3rd Charge but disallows the submission on the 1st and 2nd Charge, as it considers sufficient evidence has been adduced to make it reasonable to call upon the accused for his defence.

DEFENCE

FIRST WITNESS FOR THE DEFENCE

B.119358 Pte Fairbanks, J.A. (The Accused), CIC att 10 Canadian Repatriation Depot, sworn, states:-

Q. Will you tell the Court what happned on the evening of 14 Nov 45?

A. Supervisor Liversidge signed a work ticket for me and after finishing various duties I had been doing I went to my hut and started talking. At approximately twenty past eleven I remembered that I had to pick up Sergeant-Major Harrison and asked Pte Clarke and Pte Nicolson if they would like to accompany me and they said they would. We arrived at Epsom at five after twelve. We went there on the same road that we returned on. As CSM Harrison was not there I turned around and started back. There was a group of soldiers standing nearby and I wanted to give them a ride and stopped and asked them if they were going to camp and said there was room for four. I did not notice at the time but apparently there were six in the vehicle. I stopped once on the road and a couple of lads got out to pass their water. One fellow stayed out and when I hollered back and asked him what was the trouble he said that the rear seat of the vehicle was too crowded. We carried on at 35 to 40 miles an hour. I came to a 30 mile sign and immediately slowed down and then I came to an S Turn about 200 yards from Ashtead. As I turned the wheel to make the turn the steering felt loos e and I hit the lefthand curb. I do not remember what happened after that until I got out of the wreck and turned to look and see if the other fellows were there.

Q. How fast do you think you were going when the steering felt loos e?
A. I looked at the speedometer before the sign and it read between 35 and 40 and when I looked at the sign I think my foot slipped on the accelerator.
Q. Up until that time did you notice anything wrong with the steering?
A. The Chad had been in the LAD in October for a new steering assembly. Shock absorbers were to have been fixed on it as well.
Q. Were they?
A. Not to my knowledge.
Q. You did not think that there was anything seriously the matter?
A. The steering was stiff when it came back from the LAD, but I thought that only natural on account of the new assembly. On the evening of the accident it felt worse.
Q. Did you think on the evening of the accident that you were driving safely?
A. Yes, sir. I drove as safe as I always do.
Q. How about when you came to the curve, did you think you were driving too fast there?
A. No, sir, I was quite confident.
Q. Are you inclined to drive fast?
A. No, sir.

CROSS-EXAMINED BY PROSECUTOR

Q. Regarding this feeling of loose steering, did you feel the steering to be loose earlier in the evening?
A. It was loose. I noticed it before in the evening.
Q. In your driving, if you felt that, were you making allowances for it?
A. Yes, sir.
Q. So, any looseness in the steering, you were making allowance for it?
A. Yes, sir.

FIRST WITNESS FOR DEFENCE (CONT'D)

Q. Regarding the Shock Absorber, did you know the Shock Absorber was off?
A. Yes, sir.
Q. You were making allowances for that as well?
A. Yes, sir.
Q. Then I suggest that you were driving too fast to negotiate that turn?
A. No, sir.
Q. I suggest then that you were driving negligently in that you did not negotiate the curve?
A. When the steering felt loose I eased up at the curve.
Q. Can you give us any real reason why the Chad turned over and got up on top of the wall?
A. No, sir. Hitting the curb is about all I can say caused the vehicle to roll over.
Q. Have you ever had an accident before?
A. No, sir.
Q. And you think you were not driving around the corner negligently?
A. No, sir.
Q. Can you give us any reason why you hit the curb or why the car got up on top of the wall?
A. The only reason is the steering felt loose and I eased off a bit to s ee if the steering was gone altogether.
Q. How old is the car?
A. I don't know; I took it over in August.
Q. What mileage has it?
A. Approximately 10,000.

QUESTIONS BY COURT

Q. Can you describe the road between Epsom and the scene of the accident?
A. It was quite hilly, up and down.
Q. Were there turns on it?
A. Quite a few.
Q. You made a statement that you were travelling between 35 and 40 miles an hour?
A. Yes, sir.
Q. And on the way out you said that something was wrong with the steering?
A. Yes, sir.
Q. You do not think that 35 and 40 was excessive?
A. No, sir.
Q. Up to this curve you had an excessive load, we will say more than usual, and when a vehicle is loaded like that it is bound to swerve more at a turn than if you go slow. Do you remember going around that curve on the way out?
A. Yes, sir.
Q. Did you have any trouble?
A. No, sir.
Q. Were you going fast on the way back?
A. No, sir, about the same.
Q. Do you actually think this was caused by a difficulty in the steering assembly?
A. Yes, sir.
Q. A new steering assembly had been put in a month before?
A. Yes, sir, we got the vehicle on 9 Oct 45.
Q. When you stopped the vehicle on the road did two men get out?
A. Three got out, sir, and two got back in.
Q. Did anybody in the car say that you were driving too fast?
A. No, sir.
Q. Is this the worst turn on the road?
A. It is sir,
Q. How often have you been over that road during the last three months?
A. Two or three times a week, anyway.

FIRST WITNESS FOR DEFENCE (CONT'D)

Q. Were you taking that corner any differently on that occasion than you would have taken it on those other occasions?
A. No, sir.

IN THE OPINION OF THE COURT IT IS NOT NECESSARY TO COMPLY WITH RP 83 (B).

CHARACTER EVIDENCE

Capt J.F. Gordham, Transport Officer, 10 Cdn Repat Depot, sworn, states:-

Q. Was Pte Fairbanks employed by you previous to going with the Canadian Auxilia ry Services?
A. Yes, he was.
Q. What has been your experience with Pte Fairbanks as a driver?
A. During the period that he was working under my direction he was a very conscientious driver and I had no occasion to check him at any time regarding his driving and that is why I had him go to the Legion, as he is a good driver.

NO CROSS-EXAMINATION

IN THE OPINIONOF THE COURT IT IS NOT NECESSARY TO COMPLY WITH RP 83(B

The Prosecutor said he had nothing to add.

THE DEFENDING OFFICER ADDRESSES THE COURT

I have nothing to add except to point out again that the witnesses for the prosecution have not proven negligence or that the accused was driving too fast. I think that Pte Fairbanks' evidence, which he gave himself, has been very straightforward evidence and that he was quite confident that he was driving safely and that he was not going too fast to negotiate the curve, and under the circumstances I submit that Pte Fairbanks should be found not guilty.

THE COURT CLOSED

THE COURT RE-OPENED

The Court find the accused Not Guilty on the Second (alternative) Charge, but the finding of the Court on the First Charge being subject to confirmation cannot be communicated to the accused.

PLEA IN MITIGATION
(ATTACHED)

TRIAL OF

B.119358 Pte FAIRBANKS, J.A. ----- 10 Cdn Repat Dep

PROSECUTION

FIRST WITNESS

Lieut R.A. Harfield, Assistant Transport Officer, 10 Cdn Repat Depot, sworn, states:-

Q. On the night of 14 - 15 Nov 45, were you called out to visit the scene of an accident of one of the vehicles attached to this Unit?
A. Yes, sir.
Q. Will you tell the Court about it?
A. When there I made a sketch of the scene of the accident.

The Prosecutor hands the witness the sketch. The Defending Officer said "I object to the sketch. In the first place, it is not accurate and not according to scale and, in the second place, I understand that the measurements were taken the day following the accident and the drawing was not made until a good many days later." The President said in view of the objection of the Defending Officer the sketch would not be admitted in evidence.

On the night of 14 - 15 Nov 45 I was called by Major A.J. Geisler at 0100 hrs. As the result of what he said to me he took me to a place on the Epsom-Leatherhead Road, MR 630774, Windsor Sheet No. 114, and when I arrived there I found that there had been an accident to Canadian Vehicle No CM.4202845, a Ford Chad used by the Auxiliary Services and attached to this Depot for repairs and maintenance. My first reaction was to enquire about the passengers. I was told that they had been cared for and taken to hospital. I found that the vehicle had come to rest on top of a 4-ft brick wall, right side up at right angles to the road. With the aid of a 60 cwt we pulled the Chad off the wall onto the road. With the aid of the Police Constable that was there we looked over the road and checked for skid marks. The next day, on 15 Nov 45, I was there at 0930 hrs and I returned again at approximately 1400 hrs and then checked the marks on the road. I paced off the measurements from the beginning of the curve, from the 30 MPH speed limit sign to where the vehicle left the road and found it to be approximately 81 paces. At 51 paces into the curve the first tire pressure marks commenced three feet into the road from the edge of the road, that is 51 paces from the 30 MPH sign. The first tire pressure marks continued for 11 paces where they came to a place 4 inches from the left curb and then continued for 5 more paces where they came 2½ feet from the curb. That is where the tire pressure marks stopped. For another approximately 7 paces there were no marks at all, then the slide marks started. The pressure marks were made by the tires and the slide marks were made by the rubbing of canvas and steel where the vehicle turned on its side. The slide marks continued for 15 paces across the sidewalk which was approximately a 4-ft sidewalk with a curb about 4 or 5 inches high and they continued to the bottom of a broken down stone wall. The vehicle came to rest on the top of this wall, right side up and the force of its landing buckled the chassis so as to shorten the wheelbase. The top of the vehicle was absolutely wrecked. I do not know the condition of the wall before this accident but the wall was broken. The top and the body of the car were badly smashed but the windshield was intact. From the place where the vehicle was resting the height of the wall sloped downwards, starting in its rise from the level of the sidewalk and it is very probable that the vehicle slid up that incline to the 4-ft height where it was resting.

FIRST WITNESS (CONT'D)

The Witness says "This is a certified true extract from "M.T. Drivers' Regulations, Canadian Army Overseas." Then he says"and this is "M.T. Drivers' Regulations, Canadian Army Overseas."

THE REGUATIONS ARE MARKED EXHIBIT 1 BY THE COURT

Witness says "This is Overseas RO 3510, dated 7 Jun 43, which authorizes the use of the M.T. Drivers' Regulations.

OVERSEAS RO 3510 IS MARKED EXHIBIT 2 BY THE COURT

Q. Can you tell us the classification of this Ford Chad?
A. It is classified as a 5-passenger Chad. A 5-passenger Chad has the driver's seat and one seat in the back with a space in the back for luggage or radio sets and in the 7-passenger you have an extra seat instead of the space.
Q. In the Summary you speak of wood, canvas, cotton and steel causing the slide marks. What part of the Chad includes cotton and canvas?
A. The canvas and cotton came off the top and there is also cotton and wood underneath in different parts of the body.
Q. Was it a right angle curve?
A. It could be classified as a right angle curve although I would say it was more of a sweeping curve.
Q. Is it a dangerous curve?
A. Driving myself I would say it would be.
Q. Are there any signs to warn drivers?
A. Yes, a 30 MPH sign.
Q. What was the condition of the tires on this particular car?
A. I am not quite certain, but I would say the condition was good.
Q. How much tread was on the tires?
A. I am not prepared to say, sir.
Q. What was the condition of the roadway that night?
A. Clear and dry.
Q. Do you know whether there had been a moon that night?
A. I don't remember.
Q. Do you think a Chad turns over more easily than a station wagon?
A. I don't think there is any difference.

QUESTIONS BY COURT

Q. Mr. Harfield, from your experience as a transport officer, what do you understand to be the cab of a vehicle?
A. The cab of a vehicle, in my opinion, refers to the driver's seat, the co-drivers seat and the front compartment of a truck or lorry.
Q. Will you tell us what the effect of a shock absorber is on a vehicle going around a curve?
A. The work that the shock absorber does is that it is attached to the frame of the vehicle and it controls the up and down motion of the car more than the rolling. The up and down is the side to side motion and it acts as a snubber to restrict the up and down motion.
Q. Can you tell the Court what a stabiliser does?
A. A stabiliser is attached to the frame and also to the axle and it controls the side to side roll of the vehicle.
Q. Were you familiar with this vehicle before the accident?
A. Only when it came in for a 406 each month.
Q. Was it in a good state of repair.
A. It was roadworthy.
Q. Would the absence of a shock absorber be enough to keep a chad off the road?
A. No, sir, the absence of a shock absorber does not make a Chad unroadworthy.
Q. But it does make it less?
A. To my mind, no; others, yes.

FIRST WITNESS (CONT'D)

Q. Have you Chads here now without shock absorbers.
A. Yes, sir. It is hard to get them. It is not enough to keep a car off the road.
Q. Did it have a stabiliser?.
A. Yes, it had one.
Q. How many are on a Chad normally?
A. One, sir.

CROSS-EXAMINED

Q. Could the accident that occurred that night have been caused by a defect of the vehicle?
A. It is possible.
Q. Can you tell us whether or not that vehicle has had any repairs to its steering gear just previous to the accident?
A. That I cannot say because the Log Book went with the vehicle to the Workshop and we were not able to locate it
Q. In connection with your answers to the questions on the third charge, you were not prepared to say whether or not a Chad had a cab?
A. No, I am not prepared to say.

The Witness says "This is a Part I Order of 10 Canadian Repatriation Depot CA(O) No 125, dated 17 Dec 45.

THE ORDER IS MARKED EXHIBIT 3 BY THE COURT

IN THE OPINION OF THE COURT IT IS NOT NECESSARY TO COMPLY WITH RP 83(B).

SECOND WITNESS

Major A.J. Geisler, 2 i/c "1" Wing, No 10 Canadian Repatriation Depot, sworn, states:

This is a certified extract from the MFM 4 of the accused, which says that he was qualified as a Driver i/c Class III on 14 Feb 44.

THE EXTRACT IS MARKED EXHIBIT 4 BY THE COURT

Q. On 14 - 15 Nov 45, did you see a vehicle after it was in an accident?
A. Yes, sir, at map reference 63107745, Windsor Sheet 114.
Q. What was the number of the vehicle involved?
A. Canadian Military Vehicle CM.4202845.
Q. What did you see?
A. I saw a badly damaged vehicle perched on top of a brick wall at right angles to the road and half a dozen men or so strewn all over the place. The front of the vehicle was facing the road. Some of the men were standing, some were sitting. There were none lying down then. When I saw this vehicle I stopped and the driver and I backed the car up and put the lights on the accident. Just about this time a H.U.P. and a 60 cwt arrived with a lot of soldiers in them and they began milling around. I looked for the driver of the vehicle and found that it was Private Fairbanks, who I know by sight and asked how many were in the vehicle. He said "seven" so I made certain that all seven were accounted for. We searche the vehicle and laid some of the chaps down and covered them with blankets or whatever we could get handy. In the meantime a civilian vehicle had drawn up with a lady doctor, or at least she said she was a doctor, and a policeman was on the scene. Someone said he had ordered an ambulance from Leatherhead Emergency Hospital and the lady doctor looked at the people but she did not seem to be worried at all, except for the two chaps lying down. She wanted to move them immediately but I would not permit it until the

SECOND WITNESS (CONT'D)

ambulance arrived. When the ambulance arrived we put one chap on a stretcher and one chap sat in the ambulance. The lady doctor or another civilian with a car took, as far as I could figure out, two soldiers to a hospital. After making sure that there were no other casualties I took Fairbanks and two other lads to our own RAP. Before leaving I got the Log Book and Work ticket, making sure that it was authorized. I made sure that Fairbanks was sober and he was and I proceeded to the RAP. We then returned to the scene with Lieut Harfield and a crew, brought the vehicle in and cleaned up the road.

Q. What sort of a curve was it?
A. Just before you approach that curve you bear left. There is a sharp right turn there and the road is banked the wrong way. It has rather a high crown for a curve and after you cross it there is a tendency for a car to pull to the left. I would imagine at 30 MPH there would be quite a pull on that corner, but I am no judge of anything like that.
Q. How do you know that Fairbanks was driving this vehicle at the time of the accident?
A. I asked one of the lads who the driver was and he said Fairbanks, so I walked over to him and asked him if he had been driving and he said "yes".
Q. And you recognize Fairbanks now?
A. Yes, sir.
Q. How many injured soldiers did you see at the scene of the accident?
A. I could not tell an injured person from an uninjured unless I see blood, but I would say three.

NO CROSS-EXAMINATION

IN THE OPINION OF THE COURT IT IS NOT NECESSARY TO COMPLY WITH RP 83(B).

THIRD WITNESS

Supervisor M.I. Liversidge, Canadian Auxiliary Services, employed at No 1 Wing 10 Canadian Repatriation Depot, sworn, states:-

Q. Did you use WD Vehicle CM.4202845 on the night of 14 - 15 Nov 45?
A. I did.
Q. By whom was the trip that vehicle took on 14 Nov authorized?
A. The trip was authorized by myself to go to Epsom to pick up CSM Harrison who was in Epsom. He was supposed to be there at 2345 hours that night.
Q. Have you ever instructed your driver to pick up soldier passengers returning to camp?
A. Yes, sir. I encourage it and have the drivers stop and pick them up.
Q. Do you recognize the driver to whom you gave your instructions that night?
A. Yes, sir (indicates accused). His name is Pte Fairbanks.

CROSS-EXAMINED

Q. How long has Pte Fairbanks been driving for you?
A. Since about the beginning of August.
Q. What has been your experience with him as a driver?
A. My experience has been that he is more than an excellent driver. He is very dependable and trustworthy, has never shown carelessness and is an extremely careful driver.
Q. Has he any inclination to speed?
A. No, sir, very definitely not, to my knowledge.

THIRD WITNESS (CONT'D)

Q. What was the condition of this Chad in your opinion?
A. I have ridden in it quite a lot and I consider that mechanically it is in good condition. I have had some doubts as to the suspension although all Chads roll from side to side. I have ridden in others and while they all rolled it is not to the same extent.
Q. How much tread was on the tires?
A. The tires were in fairly good shape.

IN THEOPINION OF THE COURT IT IS NOT NECESSARY TO COMPLY WITH RP 83(B).

FOURTH WITNESS

Captain P.B. Ros e, RCAMC, Medical Officer, 1 Wing, 10 Canadian Repatriation Depot, sworn, states:-

At approximately 0130 hrs on 15 Nov 45 I saw Pte Fairbanks, Pte Clarke and Gnr Nicolson in the treatment room at the RAP. The three were quite shaken up. Fairbanks and Clarke had nothing obviously wrong except very superficial bruises. Nicolson had a laceration of the forehead which the orderly had taken care of at the time. I was told that others had been taken to Leatherhead Hospital and I went down with the ambulance as it is just a small hospital and when I got down there they had already been removed to Leatherhead Emergency Hospital where they have a resident staff. There will be no permanent disability to the three I examined.

Q. Did you see any other people the next morning?
A. The next morning at about nine o'clock Pte Morin presented himself on sick parade and he had been treated at the hospital the night before suffering from contusion to the inner side of the left ankle. There will be no permanent disability there. About 1130 that morning I went down to the Leatherhead Emergency Hospital where I saw Pte McCool, Pte Cuthbertson, Pte Larouche and Pte Olender. Pte Larouche and Pte Olender were still unconscious and I could not speak to them. Pte Cuthbertson was in bed fairly comfortable, complaining about a sore back and Pte McCool had suffered minor lacerations to the forehead. Cuthbertson and Olender were taken to 24 Canadian General Hospital that afternoon. So far as Olender and Larouche are concerned there will be no permanent disability. Cuthbertson's X-rays showed some wedging of the 6th thoracic vertebra and compression fracture of the 8th thoracic vertebra. From his hospital diagrams it is stated there might be permanent disability. I saw Pte Sweeney on the 17th. He had been treated at Leatherhead Emergency Hospital the same time as Pte Morin was. There will be no permanent disability there.

NO CROSS-EXAMINATION

IN THE OPINION OF THE COURT IT IS NOT NECESSARY TO COMPLY WITH RP 83(B).

FIFTH WITNESS

L.105482 Gnr Nicolson, G.G., No 1 Cinema Section HQ CRU, attached to 1 Canadian Repatriation Depot, sworn, states:-

Q. Did you go to Epson on the evening of 14 Nov 45?
A. Yes, sir.
Q. Will you tell the Court how it was you happened to go and what happened?
A. I was in the hut about twenty to twelve when Pte Fairbanks asked me if I would go down to Epsom with him as he had a

FIFTH WITNESS (CONT'D)

duty run run to do. We went straight to Epsom and in Epsom we stopped at the Clock Tower but his passenger was not there, so we picked up some other men. In between Epsom and Ashtead we were going around a corner and I was knocked out. The next thing I remember was getting out of the wreckage and Maj Geisler took me and Pte Fairbanks and one other soldier back to the RAP here and we had to stay for the night for medical observation.

Q. You spoke of going around a curve and then you were knocked out. Who was driving the vehicle at the time?
A. Pte Fairbanks.
Q. Do you recognize him?
A. Yes, sir (indicates accused).
Q. How fast was he going?
A. My impression was that we were not going too fast.
Q. How many were in the front seat?
A. Three of us sir.
Q. Were they crowded?
A. No, sir.
Q. Do you know how many were in the vehicle at the time?
A. No, sir.
Q. Between the time you stopped in Epsom to pick up these soldier passengers and the time you were knocked out, did the vehicle stop for any reason?
A. No, sir, once we picked up the passengers, we came straight through.
Q. Were you injured in any way?
A. I got a kind of a scrape on the head, but that was all there was to it.

CROSS-EXAMINED

Q. You are sure you did not stop once on your way coming back?
A. Yes, I am sure.

IN THE OPINION OF THE COURT IT IS NOT NECESSARY TO COMPLY WITH RP 83(B).

SIXTH WITNESS

D.115557 Pte McCool, J.L., 1 Wing, 10 Canadian Repatriation Depot, sworn, states:-

Q. Did you get a ride on a military vehicle on the evening of 14 Nov 45?
A. Yes, sir. We were standing at the corner in Epsom and the station wagon pulled up and the driver asked us if we wanted a lift back to camp. He said only a few of us could get in. We got in and started off down the road. One fellow wanted to go out to water his dog so they stopped the car. I could not see whether he got back in or not and we proceeded and came to a corner where the accident happened.
Q. Was there any careless driving?
A. I figure there was no careless driving.
Q. Were you hurt?
A. I had a scratch on the forehead and my elbow was stiff for a couple of days but it is all right now.
Q. Who was driving the vehicle?
A. I did not know at the time of the accident, except what I have been told.
Q. How many were in the front seat?
A. There may have been three. I am not sure as I was in the back. I think there were four besides myself in the back. I had a chap on my knee and was sitting right up against the door.

NO CROSS-EXAMINATION

IN THE OPINION OF THE COURT IT IS NOT NECESSARY TO COMPLY WITH RP 83(B).

SEVENTH WITNESS

F.64671 Pte Sweeney, B.C., 1 Wing, No 10 Canadian Repatriation Depot, sworn, states:-

Q. Did you get a ride in a military vehicle on 14 Nov 45?
A. Yes, sir.
Q. Who was driving?
A. Pte Fairbanks (indicates accused). After I got in the vehicle we went along and I felt the vehicle start to roll sideways.
Q. How fast was it going when it started to roll?
A. At a safe speed, 35 or 40 miles an hour.
Q. Had you no feeling that the speed was too high?
A. No, sir.
Q. How many were in the vehicle all together?
A. Approximately 8 or 9.
Q. How many were in the front seat?
A. I could not say from where I was sitting in the back next to a door.
Q. Was someone on your knee?
A. Someone was sitting in front of me.
Q. Was someone sitting beside you?
A. Yes, sir.
Q. Did the car stop from the time you got into it and the time of the accident?
A. I don't remember.
Q. Did you go to a hospital?
A. I was taken to a hospital with a small cut on the side of my head and a little one behind my ear. I had nothing wrong outside of them.

CROSS-EXAMINATION

Q. You don't know actually how fast the vehicle was going?
A. Only to my estimation.
Q. Did you feel it was going at a safe speed?
A. Yes, sir.

IN THE OPINION OF THE COURT IT IS NOT NECESSARY TO COMPLY WITH RP 83(B).

EIGHTH WITNESS

D.124718 Pte Morin, B., 1 Wing No 10 Canadian Repatriation Depot, sworn, states:-

Q. Did you get a ride in a military vehicle in the evening of 14 Nov 45:-
A. Yes, sir.
Q. Who was the driver of that vehicle?
A. I do not know because I had been doing a little drinking that night. I remember that when I got in I fell asleep and the next thing I remember I was lying on the ground.
Q. Where did you sit?
A. I sat in the back seat and somebody was sitting on my knee.
Q. Were you injured in any way?
A. Yes, sir, I went to the Leatherhead Emergency Hospital. There was a scratch on my right ankle.

NO CROSS EXAMINATION

IN THE OPINION OF THE COURT IT IS NOT NECESSARY TO COMPLY WITH RP 83(B).

NINTH WITNESS

B.70469 Pte Clarke, J.L., 9 Canadian Repatriation Depot, sworn, states:-

Q. On 14 Nov 45 what was your job?
A. Driving a tea wagon for Canadian Auxiliary Services at 10 Repat.
Q. You are not stationed here now?
A. No, sir, I am at 9 Cdn Repat.
Q. On 14 Nov 45 did you go for a ride in a military vehicle late in the evening?
A. Yes, sir.
Q. Will you tell us about it?
A. Around midnight Pte Fairbanks came into the hut and asked me if I wanted to go to Epsom with him to pick up a Sergeant-Major and I went with him. I was sitting in the rear seat. In Epsom we could not find the passenger so turned around and started back. We saw some soldiers and stopped and asked if anybody wanted a lift back to camp. A number got in the vehicle and we proceeded on back to Leatherhead. On the way back the car turned over.
Q. How fast was the vehicle travelling?
A. I would say we were travelling between 35 and 40 miles an hour. We were on the main Leatherhead-Epsom highway which is a good broad road.
Q. Did you have any impression that you were travelling too fast?
A. I had no impression that we were travelling too fast.
Q. What was the first sensation you noticed before it turned over?
A. I did not notice anything until it had turned over. I was sitting in the rear seat and someone was sitting on my knee when the vehicle turned over. That is all I remember. I woke up and I was a few feet away from the vehicle. At that time we gave what aid we could to those that were hurt badly. I just had minor scratches and returned to camp with Major Geisler.
Q. Who was driving at the time of the accident?
A. Pte Fairbanks.
Q. Do you recognize him now?
A. Yes, sir (indicates accused).

CROSS-EXAMINED

Q. Did you know anything about this Chad before you took it?
A. A couple of days before the accident we took off the shock absorber. Facing the vehicle it would be the right shock absorber. The arm had broken. We were getting another but at the time we could not get them in the stores here and there was no use of the old one being on the vehicle as it was broken.
Q. What effect would that have on a Chad going around a curve?
A. I have been a driver myself in the Army and I found that it would effect some Chads differently than others, depending on the front springs. Some are weak and some are different. It could have an effect on a car. The shock absorber sort of keeps a car from going sideways but when you have no shock absorber the car would go further one way than if you had one.
Q. Might that cause a Chad to turn over?
A. There is a possibility that that might have been what caused the Chad to turn over.
Q. How many were there in the vehicle?
A. I would not state any definite number. I was sitting in the rear centre and somebody was sitting on my knee.
Q. How many were in the front seat?
A. I could not say, sir.

NINTH WITNESS CONTINUED

Q. From where you were sitting you could not see the speedometer?
A. No, sir.
Q. And you would not know the actual speed?
A. No, sir.
Q. Did it seem to be a safe speed to you?
A. Yes, sir.

IN THE OPINION OF THE COURT IT IS NOT NECESSARY TO COMPLY WITH RP 83(B).

TENTH WITNESS

A.105339 Pte Olender, S.W., 1 Wing 10 Cdn Repat Depot, sworn, states:-

Q. Did you get a ride in a military vehicle late in the evening of 14 Nov 45?
A. Yes, sir. A few of us were standing at a corner in Epsom waiting for a truck and a station wagon came up and asked if anybody wanted to go to camp. I don't know the exact number of soldiers who were there but three got in the front seat and the rest in the back. We stopped once and I felt the car sway and then I don't remember anything until I was getting up off the road and went to the hospital along with Pte Larouche and Pte Cuthbertson.
Q. What injuries did you have?
A. I lost a tooth and had a sore ear and 13 stitches on the top of my head.
Q. When the car stopped and someone got out before the accident, was anything said?
A. I don't remember anything.
Q. Do you know why the car stopped?
A. I did not know what it was all about. We just stopped and then we started going.
Q. What about the speed?
A. I am always nervous of the vehicle I am in so as far as I am concerned I could not judge the speed.
Q. What impression did you have? You said in the summary "we were going quite fast". What did you mean?
A. About 40 miles an hour.
Q. Did you consider the driver to be driving safely?
A. The driver had this happen once before and I am always nervous in a car no matter whether they are driving fast or slow.
Q. Where were you sitting?
A. I was sitting on McCool's knee in the back on the righthand side.
Q. Could you see the speedometer?
A. No, sir.

NO CROSS-EXAMINATION

ELEVENTH WITNESS

D.63263, Pte Larouche J., Regimental Police, 1 Wing, 10 Canadian Repatriation Depot, sworn, states:-

Q. Did you get a ride in a military vehicle in the evening of 14 Nov 45?
A. Yes, sir.
Q. Who was the driver?
A. I don't know sir.
Q. Do you recognize anybody in this room?
A. No, sir.
Q. Tell us what happened?
A. We were standing on a corner at Epsom at night and a car pulled up and asked us if we were going back to camp. There were about 7 or 8 of us. About two miles down the road he stopped to light a cigarette. After that, a bit later, the car turned over.

ELEVENTH WITNESS (CONT'D)

Q. After the car stopped before the accident, did anyone get out of the car?
A. Yes, sir.
Q. Did you know who got out?
A. No, sir.
Q. Did he get back in?
A. No, sir
Q. How many were riding in the front seat at the time of the accident?
A. Two beside the driver.
Q. How many in the back seat?
A. Five.
Q. Were you injured in any way?
A. I was hurt on the back of the head and was unconscious.
Q. In the Summary of Evidence do you recall saying "We took two or three corners on what I felt like two wheels."?
A. That is correct, sir.
Q. Were you travelling fairly fast when this happened?
A. Yes, sir, fairly fast.
Q. And you definitely felt that the car was going around two or three curves on what felt like two wheels?
A. Yes, sir, it felt that way.
Q. You also say in that statement that you became scared?
A. Because I was shot between the eyes once and I am always nervous when I am riding in a car.
Q. But at the time when this one lad got out of the car, you decided to stay in because you felt the driver would get you home safely. Is that correct?
A. Yes, sir.

CROSS-EXAMINED

Q. On that night had you been drinking?
A. Yes, sir.
Q. How much?
A. Quite a bit.
Q. You mention that you are always nervous. What are your PULHEMS?
A. S3 since I was shot.
Q. In view of the fact that you had been drinking, sitting in the back seat and are of a nervous temperament, can you be absolutely sure of what you felt?
A. To tell you the truth I am nervous in any cars at all.
Q. So your opinion as to whether the car was being recklessly driven is very uncertain?
A. To tell you the truth I was not sober and I don't really know for sure.

QUESTIONS BY COURT

Q. You say the car stopped between the starting-up point and the scene of the accident. Did you hear anything as to why that man got out?
A. I heard a guy say that he had to water.
Q. And he did not get back in?
A. No, sir.

The Prosecutor said that the witness Capt C.W. Pallen was not available to give evidence, nor the witness Capt G.J.A. Kirkpatrick. The Defending Officer said he did not require the presence of either of them for the purpose of cross-examination.

THE PROSECUTION IS CLOSED

SUBMISSION BY THE DEFENDING OFFICER

The Prosecution has failed to make a prima facie case against the accused on any of the charges, for the following reasons: None of the witnesses have proven that he was driving at an excessive rate of speed. There is no witness to show at what speed he was travelling. The evidence of Mr Harfield although it shows what happened after the accident took place, does not have any bearing on the three charges, and in connection with the third charge, the evidence does not show that there are any definite orders in MT Regulations and the front seat of a Chad is not a cab. Two Witnesses, Ptes Olender and Larouche, have both admitted that they are normally nervous when they are driving in a car, whether the car is going fast or slow, and the other witnesses intimated in their evidence that the car was not going too fast and was not being driven recklessly. Any deduction that could be made from what happened at the accident by Mr Harfield can only be only theories and as they cannot be proven I feel that they should not be considered in evidence. I would also remind the Court that the witness Clarke said that a day or so before the shock absorber on the front left axle had been removed because it had a broken arm and was useless. This may have been the deciding factor in causing the accident. It was shown in the evidence of Major Geisler that the accused had not been drinking. He was on a duty run and he is not to be blamed at all for picking up soldiers in Epsom and bringing them back to camp. That is a decent and proper thing to do.

REPLY TO THIS SUBMISSION BY THE PROSECUTOR

From the evidence you have heard tod ay, that is the fact in running that curve the car caused skid and slide marks on the pavement and did not negotiate that curve, would indicate that the driver must have been driving negligently in that he did not negotiate the curve, or that he was driving at an excessive rate of speed. The skid marks, as Mr Harfield's evidence gave you, started some 3 feet from the curb. The tire pressure marks continued for 11 paces where they came to a place 4 inches from the curb. They then continued for approximately another five paces to a place 2½ feet from the curb where they then stopped. About 7 paces from the last tire pressure marks, slide marks caused by wood, canvas, cotton and steel were evident on the road and sidewalk. There were no marks between the last tire pressure marks and where the slide marks began. The slide marks commenced on the edge of the road and partially on the sidewalk and continue for about 15 paces across the sidewalk to where the vehicle came to rest on top of the brick wall. Regarding the Shock Absorber, Mr Harfield, who is Assistant Transport Officer, gave you his honest opinion on whether the shock absorber might or might not cause a car to roll or turn over and that the effect it has on a car is simply to reduce the up and down (not lateral) motion. He al so told you that there was a stabiliser on that car which controlled its side-to-side sway. Also, you have heard seven witnesses besides the driver of the vehicle and you have heard ano ther witness say that a chap named Cuthbertson went to the hospital with him which tells you that there were nine o ccupants of the vehicle. You have Pte Fairbank's qualifications, his MFM 4, and as he is a qualified Driver i/c he knows the effect of additional weight, and he also knows the number of passengers that are allowed to drive in vehicles that he is told to drive. You have heard Mr Harfield say that the vehicle was a 5-passenger Chad and the seating of a 5-passenger Chad is 2 in the front seat and 3 in the back seat.

THE COURT CLOSED

THE COURT RE/OPENED

The President announces that the Court has considered the evidence adduced with respect to the charges against the accused person and the submission made thereon by the defence counsel and finds that there is evidence adduced to make it reasonable to call upon the accused person to make his defence.

DEFENCE

FIRST WITNESS FOR THE DEFENCE

B.119358 Pte Fairbanks, J.A. (The Accused), CIC att 10 Canadian Repatriation Depot, sworn, states:-

Q. Will you tell the Court what happned on the evening of 14 Nov 45?

A. Supervisor Liversidge signed a work ticket for me and after finishing various duties I had been doing I went to my hut and started talking. At approximately twenty past eleven I remembered that I had to pick up Sergeant-Major Harrison and asked Pte Clarke and Pte Nicolson if they would like to accompany me and they said they would. We arrived at Epsom at five after twelve. We went there on the same road that we returned on. As CSM Harrison was not there I turned aroun and started back. There was a group of soldiers standing nearby and I wanted to give them a ride and stopped and asked them if they were going to camp and said there was room for four. I did not notice at the time but apparently there were six in the vehicle. I stopped once on the road and a couple of lads got out to pass their water. One fellow stayed out and when I hollered back and asked him what was the trouble he said that the rear seat of the vehicle was too crowded. We carried on at 35 to 40 miles an hour. I came to a 30 mile sign and immediately slowed down and then I came to an S Turn about 200 yards from Ashtead. As I turned the wheel to make the turn the steering felt loos e and I hit the lefthand curb. I do not remember what happened after that until I got out of the wreck and turned to look and see if the other fellows were there.

Q. How fast do you think you were going when the steering felt loos e?
A. I looked at the speedometer before the sign and it read between 35 and 40 and when I looked at the sign I think my foot slipped on the accelerator.
Q. Up until that time did you notice anything wrong with the steering?
A. The Chad had been in the LAD in October for a new steering assembly. Shock absorbers were to have been fixed on it as well.
Q. Were they?
A. Not to my knowledge.
Q. You did not think that there was anything seriously the matter?
A. The steering was stiff when it came back from the LAD, but I thought that only natural on account of the new assembly. On the evening of the accident it felt worse.
Q. Did you think on the evening of the accident that you were driving safely?
A. Yes, sir. I drove as safe as I always do.
Q. How about when you came to the curve, did you think you were driving too fast there?
A. No, sir, I was quite confident.
Q. Are you inclined to drive fast?
A. No, sir.

CROSS-EXAMINED BY PROSECUTOR

Q. Regarding this feeling of loose steering, did you feel the steering to be loose earlier in the evening?
A. It was loose. I noticed it before in the evening.
Q. In your driving, if you felt that, were you making allowances for it?
A. Yes, sir.
Q. So, any looseness in the steering, you were making allowance for it?
A. Yes, sir.

FIRST WITNESS FOR DEFENCE (CONT'D)

Q. Regarding the Shock Absorber, did you know the Shock Absorber was off?
A. Yes, sir.
Q. You were making allowances for that as well?
A. Yes, sir.
Q. Then I suggest that you were driving too fast to negotiate that turn?
A. No, sir.
Q. I suggest then that you were driving negligently in that you did not negotiate the curve?
A. When the steering felt loose I eased up at the curve.
Q. Can you give us any real reason why the Chad turned over and got up on top of the wall?
A. No, sir. Hitting the curb is about all I can say caused the vehicle to roll over.
Q. Have you ever had an accident before?
A. No, sir.
Q. And you think you were not driving around the corner negligently?
A. No, sir.
Q. Can you give us any reason why you hit the curb or why the car got up on top of the wall?
A. The only reason is the steering felt loose and I eased off a bit to s ee if the steering was gone altogether.
Q. How old is the car?
A. I don't know; I took it over in August.
Q. What mileage has it?
A. Approximately 10,000.

QUESTIONS BY COURT

Q. Can you describe the road between Epsom and the scene of the accident?
A. It was quite hilly, up and down.
Q. Were there turns on it?
A. Quite a few.
Q. You made a statement that you were travelling between 35 and 40 miles an hour?
A. Yes, sir.
Q. And on the way out you said that something was wrong with the steering?
A. Yes, sir.
Q. You do not think that 35 and 40 was excessive?
A. No, sir.
Q. Up to this curve you had an excessive load, we will say more than usual, and when a vehicle is loaded like that it is bound to swerve more at a turn than if you go slow. Do you remember going around that curve on the way out?
A. Yes, sir.
Q. Did you have any trouble?
A. No, sir.
Q. Were you going fast on the way back?
A. No, sir, about the same.
Q. Do you actually think this was caused by a difficulty in the steering assembly?
A. Yes, sir.
Q. A new steering assembly had been put in a month before?
A. Yes, sir, we got the vehicle on 9 Oct 45.
Q. When you stopped the vehicle on the road did two men get out?
A. Three got out, sir, and two got back in.
Q. Did anybody in the car say that you were driving too fast?
A. No, sir.
Q. Is this the worst turn on the road?
A. It is sir,
Q. How often have you been over that road during the last three months?
A. Two or three times a week, anyway.

FIRST WITNESS FOR DEFENCE (CONT'D)

Q. Were you taking that corner any differently on that occasion than you would have taken it on those other occasions?
A. No, sir.

IN THE OPINION OF THE COURT IT IS NOT NECESSARY TO COMPLY WITH RP 83 (B).

CHARACTER EVIDENCE

Capt J.F. Gordham, Transport Officer, 10 Cdn Repat Depot, sworn, states:-

Q. Was Pte Fairbanks employed by you previous to going with the Canadian Auxilia ry Services?
A. Yes, he was.
Q. What has been your experience with Pte Fairbanks as a driver?
A. During the period that he was working under my direction he was a very conscientious driver and I had no occasion to check him at any time regarding his driving and that is why I had him go to the Legion, as he is a good driver.

NO CROSS-EXAMINATION

IN THE OPINION OF THE COURT IT IS NOT NECESSARY TO COMPLY WITH RP 83(B)

The Prosecutor said he had nothing to add.

THE DEFENDING OFFICER ADDRESSES THE COURT

I have nothing to add except to point out again that the witnesses for the prosecution have not proven negligence or that the accused was driving too fast. I think that Pte Fairbanks' evidence, which he gave himself, has been very straightforward evidence and that he was quite confident that he was driving safely and that he was not going too fast to negotiate the curve, and under the circumstances I submit that Pte Fairbanks should be found not guilty.

THE COURT CLOSED

THE COURT RE-OPENED

The Court find the accused Not Guilty on the Second (alternative) Charge, but the finding of the Court on the First Charge being subject to confirmation cannot be communicated to the accused.

PLEA IN MITIGATION
(ATTACHED)

SUMMARY OF EVIDENCE

Summary of Evidence in the Case of B 119358 Pte Fairbanks J.A., Canadian Infantry Corps, attached to 10 Canadian Repatriation Depot, a soldier of the Canadian Army Overseas.

By direction of the Commanding Officer the Summary is taken on oath:

FIRST WITNESS:

For the prosecution

Supervisor M.I. Liversidge, Canadian Auxiliary Services, attached to 10 Canadian Repatriation Depot, an Officer of the Canadian Army Overseas, having been duly sworn, states:

I am Supervisor M.I. Liversidge of the Canadian Auxiliary Services and am employed at "1" Wing, No 10 Canadian Repatriation Depot. W.D. Vehicle CM 4202845 is used by me in my position as Auxiliary Services Supervisor. On the 14th of November 1945, I instructed my driver Pte Fairbanks, whom I now recognize as the accused, to pick up CSM Harrison in Epsom at 2345 hours. I authorized the trip myself. I have never objected to my driver picking up soldier passengers returning to Camp. I do not consider my driver guilty of negligence if he does pick up soldier passengers.

M.I. Liversidge

(M.I. Liversidge) Supervisor

The accused declines to cross-examine this witness

SECOND WITNESS

For the prosecution

L 105482 Gnr Nicolson G.G., on the strength of No 1 Cinema Section HQ CRU, a soldier of the Canadian Army Overseas, having been duly sworn, states:

I am L 105482 Pte Nicolson G.G., on the strength of No 1 Cinema Section HQ CRU. At approximately 2340 hours, on the 14th of November 1945, while spending some of my leave at No 10 Canadian Repatriation Depot, Pte Fairbanks, whom I now recognize as the accused, asked me if I would like to go for a ride to Epsom with him as he had a duty run to do. We went straight from Camp to Epsom Tower. I do not know how many passengers we picked up, nor do I remember the driver saying anything about how many were allowed to get in. One soldier got in the front with Pte Fairbanks and I. We were not crowded in the front seat and Pte Fairbanks did not say anything about not having enough room at the wheel.

On returning from Epsom towards Ashtead we were rounding a curve in the road, and after we entered the turn I was knocked out and remember nothing until I was getting out of the car. I do remember that Pte Fairbanks had been driving carefully. I really do not know any reason for the accident. I and two other of the soldiers came back to camp with Major A.J. Geisler. In camp we were taken to the RAP where we were kept under observation until morning.

G G Nicolson

(L 105482 Gnr Nicolson G G)

The accused declines to cross-examine this witness.

THIRD WITNESS: For the Prosecution

D 115557 Pte McCool J.L., on the strength of "1" Wing 10 Canadian Repatriation Depot, a soldier of the Canadian Army Overseas, having been duly sworn, states:

I am D 115557 Pte McCool J.L., and am on the strength of "1" Wing, No 10 Canadian Repatriation Depot. At approximately 2400 hours on the 14th of November 1945, I was standing with several other soldiers on a corner in Epsom waiting for a vehicle to take us back to camp. A Station Wagon stopped and someone in it asked if we wanted to go to camp. I heard someone say what sounded to me like "I can only take a few of you". Some of us got in until there were eight or nine in the car, three of which were in the front seat and the remainder in the back, we started for camp travelling at a moderate rate of speed and the driver seemed to be driving carefully and to have full control of the vehicle. Down the road a ways, the car stopped and some of the boys lit cigarettes and one chap got out to have a leak. I do not know who he was or if he got back in, as someone was sitting on my knee. Then we started off again and after travelling a short distance, I felt the car roll over and I was thrown out of the vehicle. I picked myself up and started walking up the road. I met a policeman and reported the accident. The policeman went to telephone for an ambulance and I went back to the car, waited for a while and then was taken to Leatherhead Emergency Hospital, where I was kept under observation until the next day. X-Rays were taken of my arm at the hospital. I have not any idea what caused the accident.

J L McCool

(D 115557 Pte McCool J.L.)

The accused declines to cross-examine this witness.

FOURTH WITNESS For the Prosecution

F 64671 Pte Sweeney B.C., on the strength of "1" Wing No 10 Canadian Repatriation Depot, a soldier of the Canadian Army Overseas, having been duly sworn, states:

I am F 64671 Pte Sweeney B.C., on the strength of "1" Wing No 10 Canadian Repatriation Depot. At approximately 2330 hours on the 14th of November 1945 I was standing with a group of soldiers at the near end of High Street in Epsom, waiting for a vehicle to take us back to Camp. A Station Wagon drew up and someone asked us if we were going back to Camp. The door was open and we all got in and started for Camp. I think there were eight (8) or nine (9) of us in the vehicle. I could not see the road but I considered the driver to be driving carefully. On the way to Camp I suddenly felt the car start to roll and the next thing I knew I was getting out of the car. A policeman came along and said he would call an Ambulance. Then someone took me to the Emergency Hospital at Leatherhead where I was treated and sent back to camp.

B.C. Sweeney

(F 64671 Pte Sweeney B.C.)

The accused declines to cross-examine this witness.

FIFTH WITNESS:

For the prosecution

D 124718 Pte Morin, B., on the Strength of "1" Wing No 10 Canadian Repatriation Depot, a soldier of the Canadian Army Overseas, having been duly sworn, states:

I am D 124718 Pte Morin B., employed as a Regimental Police at "1" Wing No 10 Canadian Repatriation Depot. At approximately 2345 hours on the 14th of November 1945, five (5) or six (6) soldiers including myself were standing on a corner in Epsom waiting for a vehicle to take us back to camp. A Station Wagon stopped and someone asked us if were going back to Camp. We got in and my friend sat on my knee. I think there were five (5) of us in the back seat and three (3) in the front seat. I was quite tight and immediately fell asleep. The next thing I knew I was lying on the ground, beside the car which I believe had turned over. An Ambulance came and I went with my friend to the Leatherhead Emergency Hospital where I was treated. Later I was brought back to camp where I went to bed.

B Morin
(D 124718 Pte Morin B.)

The accused declines to cross-examine this witness.

SIXTH WITNESS:

For the prosecution

B 70469 Pte Clarke J.L., of the Canadian Auxiliary Services attached to "1" Wing, No 10 Canadian Repatriation Depot, a soldier of the Canadian Army Overseas, having been duly sworn, states:

I am B 70469 Pte Clarke J.L., of the Canadian Auxiliary Services attached to "1" Wing, No 10 Canadian Repatriation Depot as driver of the Tea Wagon. At approximately 2345 hours on the 14th of November 1945, Iwas asked by Pte Fairbanks, whom I now recognize as the accused, if I would like to go on a trip with him. I went and we proceeded to Epsom where we were to pick up CSM Harrison. We did not find CSM Harrison so turned around and started back. We stopped in Epsom and picked up some soldiers. Pte Fairbanks said there was room for four (4) but I do not know how many got in or how many were in the front seat. I was sitting in the centre of the back seat with soldiers on both sides and one on my knee. We were proceeding nicely and as far as I know Pte Fairbanks was driving carefully. The driver stopped once to light a cigarette and one lad got out. I think he said something about it being crowded. I did not notice a thing until I woke up and found myself sitting on the ground about fifteen (15) feet from the car. I saw a policeman there and shortly after Major A.J. Geisler brought me back to the RAP where I was kept under observation all night and was discharged the following morning. I am a driver myself and have driven Chads and I know that the left front shock-absorber was taken off the day before the accident because it had a broken arm. We were unable to get a replacement. In my opinion, without a shock-absorber, a Chad does not resterbolize itself on a curve.

Pte Clarke J.L.
(B 70469 Pte Clarke J.L.)

The accused declines to cross-examine this witness.

SEVENTH WITNESS:

For the Prosecution

A 105339 Pte Olender S.W., on the strength of "1" Wing No 10 Canadian Repatriation Depot, a soldier of the Canadian Army Overseas, having been duly sworn states:

I am A 105339 Pte Olender S.W., and am on the strength of "1" Wing No 10 Canadian Repatriation Depot. At approximately 2400 hours on the 14th of November 1945, I was standing with several other soldiers on a corner in Epsom waiting for a vehicle to take us back to Camp. A Station Wagon stopped and some one asked us if we were going to Camp. I did not hear any one say how many could get in, but I think there were eight (8) in the car altogether; three (3) of which were in the front seat. We stopped once and the "smart guy" got out and stayed out. I do not know who he was. We started on again, going quite fast, I was feeling a bit nervous because I always do in a car, regardless of how slow or fast a driver goes, but I did not consider the driver to be driving safely. I felt the car sway and remember nothing until being thrown through the roof and I lit on the road. I was taken to the hospital along with B 126923 Pte Cuthbertson H.D., and D 63263 Pte LaRouche J., who were also with me in the vehicle.

S. Olender

(A105339 Pte Olender S.W.)

The accused declines to cross-examine this witness.

EIGHTH WITNESS:

For the Prosecution

D 63263 Pte Larouche, J., Canadian Infantry Corps, on the strength of No 10 Canadian Repatriation Depot, a soldier of the Canadian Army Overseas, having been duly sworn, states:

I am D 63263 Pte Larouche, J., and am employed on the Regimental Police of "1" "ing, No 10 Canadian Repatriation Depot. At approximately 0030 hours on the 15th of November 1945, I was standing with several other soldiers, on a corner in Epsom when a Station Wagon came along and someone in it asked us if we were going to Camp. We said yes and got in. I think there were seven (7) or eight (8) of us in the vehicle including three (3) in the front seat. We started for Camp. We took two or three corners on what I felt like two wheels. About two miles down the road the driver stopped the car to light a cigarette. At this point, one of the soldiers got out of the car and did not get back in. I do not know who he was. I stayed in the car because I thought the driver could get us back safely. We started off again, and when just entering another bend, I felt the car roll. At this point I became scared. ~~I felt the car was not being driven safely.~~ This is the last thing I remember and I came to in the Leatherhead Emergency Hospital.

J. Larouche.

(D 63263 Pte Larouche J)

The accused declines to cross-examine this witness.

NINTH WITNESS: Major A.J. Geisler, Canadian Infantry Corps, on the strength of No 10 Canadian Repatriation Depot, an Officer of the Canadian Army Overseas, having been duly sworn, states:

For the prosecution

I am Major A.J. Geisler and am 2 i/c "1" Wing, No 10 Canadian Repatriation Depot. On the morning of the 15th of November 1945, at approximately 0020 hours, I was proceeding from Epsom to Leatherhead. On rounding a bend about two miles from Epsom, I saw several soldiers waving in the middle of the road and one soldier lying on the sidewalk. I ordered my driver to stop and I ran back to see what the trouble was. I saw that there had been an accident and that Vehicle No CM 4202845 was perched on top of a four foot brick wall at right angles to the road with the engine towards the road. The vehicle was very badly damaged. I immediately made attempts to find out how many were in the vehicle and after laying the more seriously injured soldiers on blankets, my driver and I searched through the wreckage and in the bushes behind the wall for other persons. The driver who was known to me, did not seem to be as seriously hurt that he could not answer the odd question. I asked him how many were in the car and he replied that there were seven (7). This I checked upon and did account for seven (7) people. I smelled the driver's breath and there was no odour of alcohol whatsoever. I checked the Vehicle Log Book and Work Ticket and found the Log book in order and the Work Ticket authorized.

In the meantime, several other Army Vehicles had arrived and there were approximately twenty (20) soldiers, including the driver, I placed in my vehicle. Two I despatched to Leatherhead Emergency Hospital in the Ambulance that had arrived. A lady Doctor had arrived at the scene of the accident shortly after I had stopped. She took two of the men with her in her car to the Leatherhead Emergency Hospital. I did not take her name since she was not a witness in any way, nor did she treat the injured soldiers in any way. She requested that she remain annonymous. I then ordered the Military Vehicles that had stopped, to proceed to their various Units, after which I returned to Camp and had the Medical Officer, Capt Rose attend to the three injured soldiers I brought with me. I then returned to the scene of the accident with a towing Vehicle and a crew of men including the Transport Officer. The Vehicle was then pulled down from the brick wall and the wreckage gathered up, the road cleaned of glass and the vehicle towed back to camp.

A.J. Geisler

(A.J. Geisler) Major

The accused declines to cross-examine this witness.

TENTH WITNESS: Captain P.B. Rose, Royal Canadian Army Medical Corps, on the strength of No 10 Canadian Repatriation Depot, an Officer of the Canadian Army Overseas, having been duly sworn, states:

For the Prosecution

I am Captain P.B. Rose and am Medical Officer for "1" Wing 10 Canadian Repatriation Depot. I saw B 119358 Pte Fairbanks, J.A., whom I now recognize as the accused, and B-79469 Pte Clarke J.L., at approximately 0130 hours on the 15th of November 1945. They were suffering from bruises

and a severe shaking up. I saw L 105482 Gnr Nicolson G.G. at approximately 0130 hours on the 15th of November 1945 and he was suffering from superficial bruises and one 1/2" laceration to his scalp. I saw D 124713 Pte Morin, D. at 0900 hours on the 15th of November 1945 and he was suffering from contusions to his right ankle. I saw F 64671 Pte Sweeney B.C., at 1330 hours on the 16th of November 1945. He had been previously treated at the Leatherhead Emergency Hospital and was suffering from lacerations to his right ear and scalp and superficial bruises. All these injuries are minor in nature, and will cause no permanent disability. D 115557 Pte McCool, J.L., admitted to Leatherhead Emergency Hospital on the night 14/15 Nov 45 and discharged the following morning. He was suffering from minor bruises of the forehead. A 105339 Pte Olender, S. and D 63263 Pte LaRouche J. These men have been discharged from hospital and are quite fit. From perusal of their hospital discharge notification sheets, I would presume there will be no permanent disability.

P.B. Rose
(P.B. Rose) Capt

The accused declines to cross-examine this witness.

ELEVENTH WITNESS: Captain C.W. Pallen, on the strength of No 121 LAD (RCEME), an officer of the Canadian Army Overseas,

For the prosecution

Pursuant to R.P. 4 (g) a statement of the witness' evidence purporting to be signed by him has been read over to the accused, B 119358 Pte Fairbanks, J.A., and is included in this Summary and marked "APPENDIX "A". I certify that the attendance of this witness cannot be readily procured owing to the exigencies of the service and to the expense and loss of time involved.

The accused does not demand the attendance of this witness for cross-examination.

R. Chantler Capt
(R.L. Chantler) Captain
Officer detailed to take Summary

TWELTH WITNESS Captain G.J.A. Kirkpatrick, Medical Officer, on the strength of No. 24 Canadian General Hospital, an officer of the Canadian Army Overseas.

For the prosecution

Pursuant to R.P. 4 (g) a statement of the witness' evidence purporting to be signed by him has been read over to the accused, B 119358 Pte Fairbanks, J.A., and is included in this Summary and marked "APPENDIX "B". I certify that the attendance of this witness cannot be readily procured owing to the exigencies of the service and to the expense and loss of time involved.

The accused does not demand the attendance of this witness for cross-examination.

R. Chantler Capt
(R.L. Chantler) Captain
Officer detailed to take Summary

THIRTEENTH WITNESS

For the Prosecution

Lieut R.A. Harfield, on the strength of "1" Wing, No 10 Canadian Repatriation Depot, an officer of the Canadian Army Overseas, having been duly sworn, states;

I am Lieut R.A. Harfield, Assistant Transport Officer, on the strength of "1" Wing, No 10 Canadian Repatriation Depot. On the morning of 15th of November 1945, at about 0100 hours, I was called by Major A.J. Geisler to the scene of an accident at WINDSOR SHEET NO. 114 MR 630774 on the Epsom-Leatherhead Road. When I arrived there I found Canadian Army War Department Vehicle No. CM 420845 had been involved in an accident and was resting on the top of a four (4) foot brick wall at right angles to the road, right side up. My first re-action was to inquire about the passengers, and was told they had been taken to hospital. That night with the help of a Police constable, I checked the skid marks but did not take any measurements. On the morning of the 15th of November 1945, at about 0930 hours, I went back to the scene of the accident to take measurements. Distances were paced only. The accident occurred at MR 630774, WINDSOR SHEET No. 114, which is quite a sharp curve. The measurement from the beginning of the curve, with a 30 MPH sign just before the curve, was fifty-one (51) paces from the 30 MPH speed sign to where WD vehicle left the road approximately eighty-one (81) paces. The first tire pressure marks started, three (3) feet from the curb. The tire pressure marks continued for eleven (11) paces where they came to a place four (4) inches from the curb. The tire pressure marks then continued for approximately another five (5) paces to a place two and a half (2½) feet from the curb where they then stop.

About seven (?) paces from the last tire pressure marks, slide marks caused by wood, canvas, cotton, and steel are evident on the road and sidewalk. There are no marks between the slide marks and the last tire pressure marks and where the slide marks begin.

These slide marks commence on the edge of the road and partially on the side walk and continue for about fifteen (15) paces across the side walk, then the vehicle came to rest on the top of a brick wall, then the angles to the road, right side up. The chassis of the W.D. Vehicle No. CM 420845 was badly bent in the centre creating a shortened wheel base. To clarify my evidence I produce a diagram marked EXHIBIT "A" which is not drawn to scale but which shows the various measurements made by pacing at the scene of the accident. I produce the following documents pursuant to Overseas Routine Orders 5352; which have been read over and shown to the accused, B 119358 Pte Fairbanks, J.A., whom I now recognize. Certified True Extract from Routine Order 3510 dated 7 June 1943). Certified True extract from MFH 4 relating to the accused, B 119358 Pte Fairbanks, J.A., whom I now recognize.

R.A. Harfield

(R.A. Harfield) Lieut

The accused declines to cross-examine the

THIRTEENTH WITNESS

For the Prosecution

Lieut R.A. Harfield, on the strength of "1" Wing, No 10 Canadian Repatriation Depot, an officer of the Canadian Army Overseas, having been duly sworn, states:

I am Lieut R.A. Harfield, Assistant Transport Officer, on the strength of "1" Wing, No 10 Canadian Repatriation Depot, On the morning of 15th of November 1945, at about 0100 hours, I was called by Major A.J. Geisler to the scene of an accident at WINDSOR SHEET NO. 114 MR 630774 on the Epsom-Leatherhead Road. When I arrived there I found Canadian Army War Department Vehicle No. CM 420845 had been involved in an accident and was resting on the top of a four (4) foot brick wall at right angles to the road, right side up. The wreckage from the car was strewn over a wide area. My first re-action was to inquire about the passengers, and was told they had been taken to hospital. That night with the help of a Police onstable, I checked the skid marks but did not take any measurements. On the morning of the 15th of November 1945, at about 0930 hours, I went back to the scene of the accident to take measurements. Distances were paced only. The accident occurred at MR 630774, WINDSOR SHEET No. 114, which is quite a sharp curve, with a 30 MPH sign just before the curve. The measurement from the beginning of the 30 MPH speed sign to where WD Vehicle left the road is approximately eighty-one (81) paces. Fifty-one (51) paces from the 30 MPH speed sign, the first tire pressure marks started, three (3) feet from the curb. The tire pressure marks continued for eleven (11) paces where they came to a place four (4) inches from the curb. The tire pressure marks then continued for approximately another five (5) paces to a place two and a half (2½) feet from the curb where they then stop.

About seven (7) paces from the last tire pressure marks, slide marks caused by wood, canvas, cotton, and steel are evident on the road and sidewalk. There are no marks between the last tire pressure marks and where the slide marks begin.

These slide marks commence on the edge of the road and partially on the side walk and continue for about fifteen (15) paces across the side walk, then the vehicle came to rest on the top of a brick wall at right angles to the road, right side up. The chassis of the W.D. Vehicle No. CM 420845 was badly bent in the centre, creating a shortened wheel base. To clarify my evidence I produce a diagram marked "EXHIBIT "A" which is not drawn to scale but which shows the various measurements made by pacing at the scene of the accident. I produce the following documents pursuant to Overseas Routine Orders 5352, which have been read over and shown to the accused, B 119358 Pte Fairbanks, J.A., "EXHIBIT "B", Certified True Extract from M.M.I Drivers' Regulations Canadian Army Overseas. (as authorized by Overseas Routine Order 3510 dated 7 June 1943). EXHIBIT "C", certified true extract from MFM 4 relating to the accused, B 119358 Pte Fairbanks, J.A., whom I now recognize as the accused.

R.A. Harfield Lt.

(R.A. Harfield) Lieut

The accused declines to cross-examine this witness.

The accused was cautioned as follows: Do you wish to make a statement or give evidence on oath? You are not obliged to say anything or give evidence unless you wish to do so, but whatever you say or any evidence you give will be taken down in writing and may be given in evidence.

The accused declined to make a statement or to give evidence on oath.

I certify that the foregoing Summary of Evidence consisting of eight (8) pages was taken down by me in the presence and hearing of the accused, and that Rules of Procedure 4 (c) (d) (e) (f) and (g) have been complied with.

R.L. Chantler Capt

(R.L. Chantler) Capt
Officer detailed to take summary

IN THE FIELD
1 December 1945

10 CANADIAN REPATRIATION DEPOT CA(O)

D A I L Y O R D E R S

Ex 3 MY

P A R T I

by

LT-COL J. RUNCIE, MC, COMD

No's 520 - 522 | 17 DEC 45 | D.O.No 125

520. DUTIES

CAPT ORDERLY OFFICER	17 Dec 45	Capt F.C. Goodman	MC
NEXT FOR DUTY	18 Dec 45	Lieut E.J. Miller	
NEXT FOR DUTY	19 Dec 45	Lieut D.E. Fleming	
DUTY OFFICER "1" WING	17 Dec 45	Lieut E.J. Lavigne	
NEXT FOR DUTY	18 Dec 45	Capt J.P.O. Webster	
NEXT FOR DUTY	19 Dec 45	Lieut V.D. Hamilton	

521. ROUTINE FOR THE WEEK.

Reveille	0700 hrs	Parade (HQ)	1315 hrs
Breakfast 0745 -	0815 "	Meal Parade (Supper)	1700 "
Parade (HQ)	0845 "	Retreat	1730 "
C.O's Orders	1100 "	Defaulters Parade	1745 "
Meal Parade Dinner	1200 "	First Post	2215 "
Defaulters Parade	1245 "	Last Post (tattoo)	2245 "
		Lights Out	2300 "
Saturday (Supper)	1630 "		

522. CARRIAGE OF PASSENGERS CDN MIL VEHS

1. The maximum number of passengers incl dvr carried in light mil vehs will be as follows.

(a) Staff car	-	5
(b) Chad	-	5
(c) Jeep	-	5
(d) Station Wagon	-	7

2. Attention is directed to the provisions of para 39 chapter 2 of "MT Dvrs Regs" which govern the number of passengers to be carried in heavier vehs.

3. Subject to the exceptions contained in "MT Dvrs Regs" NOT more than two persons incl dvr will ride in the front seat or cab of any vehicle.

(M.A. Craig) Capt
Adm Offr
10 Cdn Repat Depot

:eft

10 12 [illegible] Exhibit "C"

M.F.M. 4(a) (Part II)

SERVICE AND CASUALTY FORM

(PART II)

Regimental Number B119358

Regiment or Corps

Substantive Rank PTE Surname FAIRBANKS Christian Names J.A

Acting Temporary or Local Rank

(To be entered in pencil to facilitate alteration)

(a) Report: Date	(a) Report: From whom received	(b) Unit	(c) Record of all casualties regarding promotions (acting, temporary, local or substantive), appointments, transfers, postings, attachments, &c., forfeiture of pay, wounds, accidents, admission to and discharge from Hospital, Casualty Clearing Stations, &c. Date of disembarkation and embarkation from a theatre of war (including furlough, &c.) in accordance with para. 2 of Note to Table I of Appendix III of Field Service Regulations, Volume I	(d) Place of Casualty	(e) Date of Casualty	(f) Army rank as at (e)	(g) Army Form or other authority for entry to be shown
			QUALIFIED AS DRIVER M/C CLASS III, wheeled, excluding motorcycle on 14 Feb 44			PTE	DO 71 d/18 Feb 44

Certified True Copy

EXH

ORDERLY ROOM

8 DEC 1945

Canadian Auxiliary Services (UK)

[illegible] Lt. Col.

A.D.A.S. HQ CRU

ESTIMATE OF DAMAGE

Ford Chad 1942 Model
W.D.V. No. CM-4202845
Aux. Services-10 Cdn Repat Depot "1" Wing

New 1942 Chad (Ford) Quoted by D.A.D.O.S. CRU £527/0/0

Serviceable and recoverable components-tires, tubes, wheels, engine, radiator, battery, transmission, differential and miscellaneous sheet metal, etc., etc. £165/0/0

Total cost of damage £362/0/0

Estimated by "C.W. Pallen" Capt

"C.W. Pallen" Capt
(C.W. Pallen) Captain
Officer Commanding
No 121 LAD (RCEME)
Cdn Army Overseas

APPENDIX "A"

Exhibit "B" Lib.

10 CANADIAN REPATRIATION DEPOT

Certified true extract from "M.T. Drivers' Regulations, Canadian Army Overseas" as authorized by Overseas RO 3510 dated 7 June 1943.

"

PASSENGERS IN CANADIAN MILITARY AND CIVILIAN TRANSPORT

39. In no circumstances will the number of passengers in Canadian military owned or hired vehicles exceed the following:-

Motorcoaches - - - - - - - - - - - - - - - -	according to seating capacity
Lorries, 3 to 5-Ton - - - - - - - - - - - -	20
Lorries, 30-cwt. - - - - - - - - - - - - -	15
Lorries, 15-cwt. - - - - - - - - - - - - -	8
Lorries, 3-ton troop carrying - - - - - - -	30

40. IT IS FORBIDDEN:-

(a) For more than two persons (including the driver) to ride in the cab of a vehicle; "

CERTIFIED TRUE COPY

R A Stanfield Lt.

APPENDIX "B"

NO. 24 CANADIAN GENERAL HOSPITAL RCAMC

24 CGH 10-0-11
4 Dec '45

ORDERLY ROOM
5-2-9
6 DEC 1945
4106
8 CITR

Administration Officer,
1 Wing, 10 Cdn Repat Depot,
Canadian Army England.

Report on Injuries
B-126923 Pte. CUTHBERTSON, H.D.

The m/n was admitted to hospital on 15 Nov '45 suffering from a laceration of the scalp, which had been sutured prior to admission, and X-rays here showed some wedging of the 6th thoracic vertebra, and compression fracture of the 8th thoracic vertebra. Plaster of paris jacket was applied and he was repatriated to Canada, leaving this hospital on 29 Nov '45.

The vertebral fractures are of such a nature that they may cause future disability.

(G.J.K. Kirkpatrick) Capt.,
Medical Officer,
No. 24 Cdn. General Hospital.

/WP

LIST OF WITNESSES

In the case of B 119358 Pte Fairbanks, J.A., Canadian Auxiliary Services, attached to No 10 Canadian Repatriation Depot.

FOR THE PROSECUTION

1.		Supvr	M.I. Liversidge	Cdn Aux Service
2.	L 105482	Gnr	Nicolson, G.G.	1 Cinema Section HQ CRU
3.	D 115557	Pte	McCool J.L.	10 Cdn Repat Dep
4.	F 64671	Pte	Sweeney B.C.	10 Cdn Repat Dep
5.	D 124718	Pte	Morin B.	10 Cdn Repat Dep
6.	B 70469	Pte	Clarke J.L.	Cdn Aux Service
7.	A 105339	Pte	Olender S.W.	10 Cdn Repat Dep
8.	D 63263	Pte	Larouche, J.	10 Cdn Repat Dep
9.		Major	A.J. Geisler	10 Cdn Repat Dep
10.		Captain	P.B. Rose	10 Cdn Repat Dep
11.		Captain	C.W. Pallen	No 121 LAD (RCEME)
12.		Captain	G.J.A. Kirkpatrick	No 24 Cdn Gen Hospital
13.		Lieut	R.A. Harfield	10 Cdn Repat Dep

FOR THE DEFENCE

N I L

LIST OF EXHIBITS

APPENDIX "A"	Statement on Estimate of Damage on Vehicle by Capt C.W. Pallen
APPENDIX "B"	Statement on Injuries on B 128923 Pte Cuthbertson, H.D. by Capt G.J.A. Kirkpatrick
EXHIBIT "A"	Diagram drawn by Lt R.A. Harfield
EXHIBIT "B"	Certified True Extract from No. 1 Drivers' Regulations Canadian Army Overseas. (as authorized by Overseas Routine Order 3510 dated 7 June 1943).
EXHIBIT "C"	Certified true extract from MFM 4 of the accused, B 119358 Pte Fairbanks, J.A.

1 December 1945

This is to acknowledge that I have received, free of charge, the following papers in connection with my forthcoming trial by FGCM.

1 Copy of Charge Sheet
1 Copy of Summary of Evidence
1 List of Witnesses
1 List of Exhibit

I request the services of Capt. F.W. Fraser or Capt. P.J. Doyle if he is available to defend me at my forthcoming trial by FGCM.

J.A. Fairbanks

(B 119358 Pte Fairbanks, J.A.)

ARMY FORM B.206.

Statement as to Character and Particulars of Service of Accused.

Number.	*Rank.*	*Name.*	*Regiment (or as the case may be).*
B 119358	Pte	FAIRBANKS J A	10 Cdn Repat Dep

1. The following is a fair and true summary of the entries in the regimental and squadron, battery or company conduct sheets† of the accused, exclusive of convictions by a court martial or a civil court, of summary awards under section 47 of the Army Act, and of cases in which trial has been dispensed with :—

NOTE.—At a trial by field general court martial this summary may be compiled from the field conduct sheet. The conduct sheet(s) mentioned should be produced in court with this statement but not annexed to the proceedings.

† See para. 677, K.R., 1940.

* The numbers herein stated should correspond with the number of entries in the conduct sheets; pleonasce being given to the most serious offence in each entry, and to any recognised special acts of gallantry or distinguished conduct.

INSTRUCTION.—If the charge is for drunkenness the entries for drunkenness must be stated separately and dated.

	* Within last 12 months.		*Since Enlistment.	
For AA Sec 15(1)	NIL	times	3	times.
For AA Sec 40	NIL	times	1	times.
For ~~AA Sec 40~~	~~NIL~~	times		times.
For ~~AA Sec 15(1)~~	~~NIL~~	times		times.
For ~~AA Sec 40~~	~~NIL~~	times		times.

Number of instances of ~~gallantry or~~ distinguished conduct, ~~NIL~~

~~There are no entries in the conduct sheets of the accused.~~

2. The accused has not been previously convicted, ~~NIL~~

~~Previous convictions† of the accused by a court martial or civil court, summary awards under section 47 of the Army Act, and dispensations with trial under section 73 of the Act, are set out in the schedule annexed to this statement.~~

3. ~~The accused is not under sentence at the present time.~~ The accused at the present time is under sentence for ~~NIL~~ beginning on the ~~NIL~~ day of ~~NIL~~

4. The accused has been in confinement, awaiting trial on the present charges, for NIL days in civil custody, and 1 days in military custody, making a total of 1 days, of which NIL days were spent in hospital.

5. The present age of the accused according to his ~~attestation paper~~ record of service is 20 years of age

6. The date of his ~~birth~~ attestation specified in his ~~attestation paper~~ record of service is 11 November 1943

7. ~~The service which the accused is allowed to reckon towards discharge or transfer to the reserve is~~ ~~NIL~~

8. ~~The accused is entitled to deferred pay or gratuity in respect of~~ ~~NIL~~ service.

9. ~~The accused is entitled to reckon~~ ~~NIL~~ for the purpose of determining his pension, etc.

10. The accused is in possession of, or ~~entitled to, no military decoration or military award (or is in possession of or entitled to (state any military decoration or award)).~~ NIL

11. ~~(If the accused is a warrant officer.)~~ The accused before he was made a warrant officer last held the regimental rank of ~~NIL~~

12. ~~(In the case of an officer.)~~ The accused held ~~NIL~~ the rank of ~~NIL~~ dated ~~NIL~~ and in his regiment (or corps or department) the rank of ~~NIL~~ dated ~~NIL~~

(72000) W1.24000/1720 20,000 10/43 A.& E.W.Ltd. 69-670
(68000) W1.52000/1420 18,000 2/44 " "

EXB

Schedule of Convictions by a Court Martial or Civil Court, of summary awards under Section 47 of the Army Act and of cases in which trial has been dispensed with of accused.

No. B 119358 Rank Pte Name Fairbanks J A of CIC Regiment (or as the case may be).

(INSTRUCTION—A verbatim extract from the regimental books, stating these convictions and dispensations with trial, must be inserted.)

Description of court by which tried, or status of officer disposing of the charge or dispensing with trial	Date and place of trial, or summary award under A.A. 47, or of order dispensing with trial.	Charges upon which convicted, or in respect of which trial was dispensed with.	Sentence of the court or authority disposing of the charge, or order of the dispensing authority.	Punishment remitted.
		AWL		
		AWL		

I HEREBY CERTIFY that the foregoing schedule of convictions and dispensations with trial is a true extract from the regimental books in my custody.

Signed this 1st day of December

A. E. Stewart Lt.
Asst Adjt. 16 Can Regt Depot

13. The accused has served as a non-commissioned officer continuously, without reduction, to the present date.

		Date of Promotion.
In the rank of	years	
In the rank of	years	
In the rank of	years	

(INSTRUCTION—If any matter in any of the above paragraphs cannot be stated from the regimental books the paragraph must be struck through, except that in the case of a trial by field general court-martial the information may be collated from such sources as are available and the paragraphs concerned amended accordingly.)

...y Conduct Sheet

John Alfred
Sqn, Battery, or Company

2 CD (AP) C. RMF. C R Wing #7 Coy Btfd "Yn"
Corps

Date of enlistment 11 Nov 43 GC

Badges

Signature OC Company, etc

Service or Proficiency Pay

Sheet No

3/17 MFM 6
(AFB 122)
40/PRS/146 (5413)

Place	Date of offence	Rank	Cases of drunkenness	No. and date of last drunk	Period not reckoning towards freedom from extra fine	OFFENCE	Names of Witnesses	Punishment awarded	Date of award or of order dispensing with trial	By whom awarded	Remarks
Toronto Ont	5 Dec 43	Pte				AWL from 0800 hrs 5 Dec 43 until V/S at 1500 hrs 5 Dec 43. AA Sec 15(1) (1 day)	Cpl Walker H J	2 days CB	6 Dec 43	Capt P L Honsall	1 days Pay FRI 149
Simcoe Ont	24 Jan 44	Pte				AWL from 0615 hrs 24 Jan 44 until 0130 hrs 27 Jan 44 (2 days 19 hrs & 30 min) AA Sec 15(1)	Cpl Sparling Docy	7 days CB	27 Jan44	Major G M Calbraith	For 3 days Pay FR&I
Simcoe Ont	30 Mar 44	Pte				AWL from 0615 hrs 30 Mar 44 to 1600 hrs 7 Apr 44 (8 days 9 hrs and 45 mins) AA Sec 15 (1)	L/Cpl Bettersby Docy	14 days CB 14 days Pay	10 Apr 44	Major Hunter	Forf 9 days Pay FR&I

(PTO)

B 119358 FAIRBANKS John Alfred — 2 ND (AF) C. IMF. C R Wing #7 Coy Btfd "Y" — 11 Nov 43 — Service or Proficiency Pay — 3/17 MFM 6 (AFB 122) 10/P&S/136 (5415)

No. | Name | Sqn, Battery, or Company | Corps | Date of enlistment | GC Badges | Character

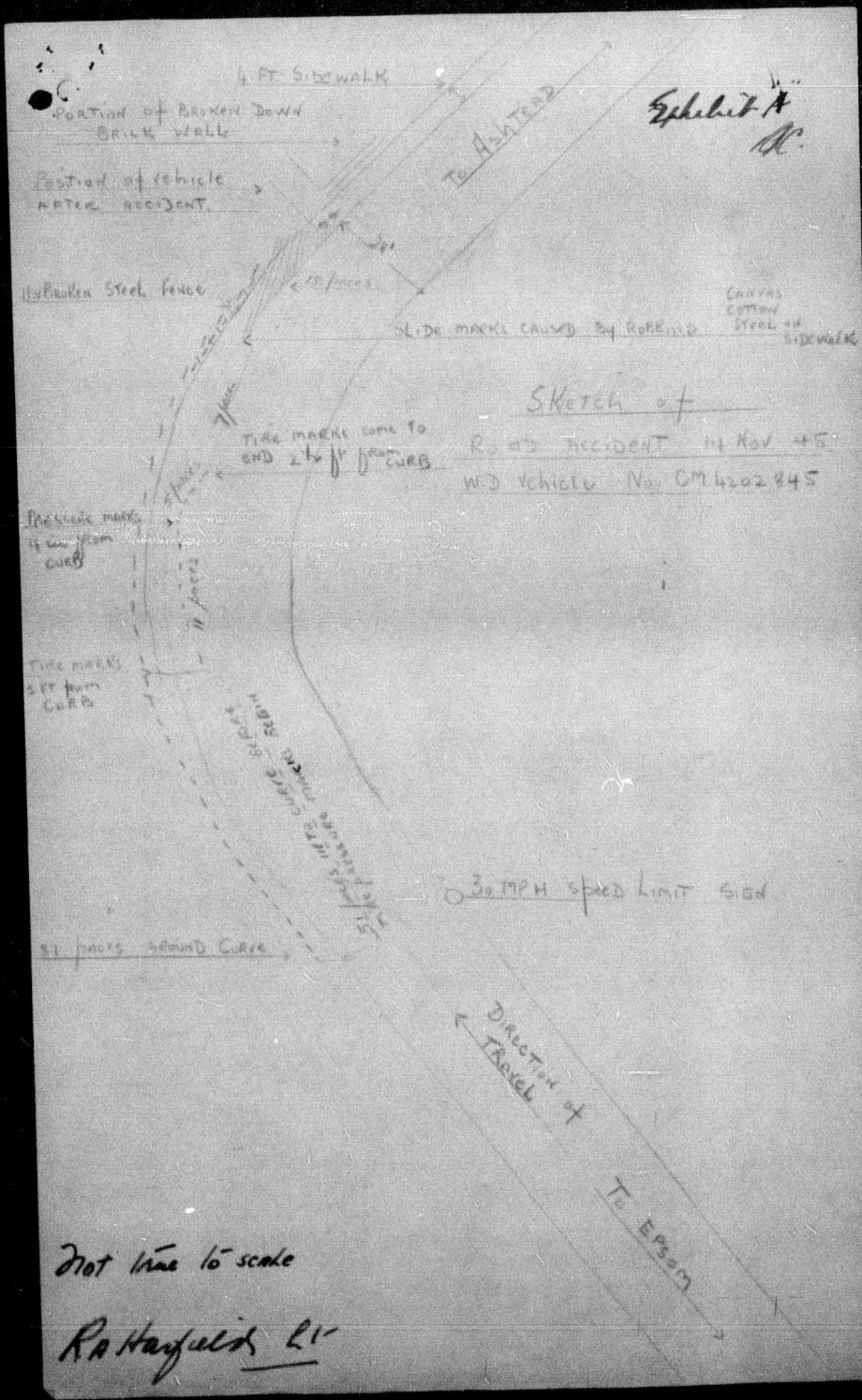
Date of last entry in Company Conduct Sheet | No. and date of last drunk | Period not reckoning towards freedom from extra fine | Sheet No | Signature OC Company, etc

Place	Date of offence	Rank	Cases of drunkenness	OFFENCE	Names of Witnesses	Punishment awarded	Date of award or of order dispensing with trial	By whom awarded	Remarks
Toronto Ont	5 Dec 43	Pte		AWL from 0800 hrs 5 Dec 43 until V/S at 1500 hrs 5 Dec 43. AA Sec 15(1) (1 day)	Cpl Walker H J	2 days CB	6 Dec 43	Capt P L Honsall	1 days Pay FRI 149
Simcoe Ont	24 Jan 44	Pte		AWL from 0615 hrs 24 Jan 44 until 0130 hrs 27 Jan 44 (2 days 19 hrs & 30 min) AA Sec 15(1)	Cpl Sparling Docy	7 days CB	27 Jan 44	Major G M Galbraith	For 5 days Pay FR&I
Simcoe Ont	30 Mar 44	Pte		AWL from 0615 hrs 30 Mar 44 to 1600 hrs 7 Apr 44 (8 days 9 hrs and 45 mins) AA Sec 15 (1)	L/Cpl Battersby Docy	14 days CB 14 days Pay	10 Apr 44	Major Hunter	Forf 9 days Pay FR&I

(PTO)

Place	Date of offence	Rank	Cases of drunkenness	OFFENCE	Names of Witnesses	Punishment awarded	Date of award or of order dispensing with trial	By whom awarded	Remarks
Fd	4 Aug 45	Pte		AA Sec 40 WCAS Neg to Con of Good Or & Mil Disc in that he in the fd, was driving a WD Vehicle recklessly.	Major A.C. Ross	7 days CB	6 Aug 45	Major A.C. Ross	

CERTIFIED TRUE COPY Capt.


4 FT SIDEWALK
PORTION OF BROKEN DOWN BRICK WALL
Position of vehicle AFTER ACCIDENT
To Ashtead
Exhibit "A"
Broken Steel Fence
15 paces
SLIDE MARKS CAUSED BY ROBERTS
CANVAS COVERED STEEL ON SIDEWALK
SKETCH of
ROAD ACCIDENT 14 Nov 45
W.D Vehicle No. CM 420245
TIRE MARKS come to END 2 ft 6 in from CURB
Pressure marks 4 ins from CURB
11 paces
TIRE MARKS 5 FT from CURB
CURVE RISING
30 MPH speed LIMIT SIGN
31 paces AROUND CURVE
DIRECTION of TRAVEL
To EPSOM
Not true to scale
R A Hayfield Lt

H.Q.C. 55-F-886 CONFIDENTIAL

DEPARTMENT OF NATIONAL DEFENCE — OTTAWA, CANADA

SUBJECT

FIELD GENERAL COURT-MARTIAL

FAIRBANKS, GEORGE EDWARD B- [illegible] R.

CONFIDENTIAL
H.Q.C. 55-F-886

CENTRAL REGISTRY	DATE	T.A. OR R.P.	INITIALS	REFERRED TO	FOR	INITIALS	DATE
				(If purpose for which referred cannot be expressed on one line enter here "With Minute")			2-12-46

OVERSEAS COMBINED

NOTICE

1. Files should be retained no longer than absolutely necessary. If a file is frequently needed at short intervals, it is better to R.P. it for two or three days than keep it out of Central Registry indefinitely. This ensures it being completed and kept in order, and also gives other officers an opportunity to see same.
2. [illegible] should be marked whenever a file is passed direct to another branch.
3. All enclosures should bear the official file number.

PASS THIS FILE IN ENVELOPE

SCHEDULE.

PART I. PLEA(S), FINDING(S) AND SENTENCE.

Accused : B.19612 Tpr. FAIRBANKS, G. E. - 2 CGRU.

Charge. (Insert "alternative" where applicable.)	Plea. (See Instrs p 2.)	Finding. (See note below.)	(Space for use as required for further charges, accused charged jointly, special findings, etc.)
1st AA Sec 15(1)	GUILTY	GUILTY	
2nd			
3rd			
4th			
5th			
6th			

(Note : As to findings for lesser offences see AA 56, RP 44 ; findings on alternative charges see MML p 483 fn 4 para 2, RP 44 ; special findings see RP 44 and MML p 753, and in loss of kit see RP 44 fn 6.)

~~At present under sentence for~~ ~~beginning on (date)~~ (1)

(1. Insert sentence being served, or delete, if not applicable. See RP 46(A). Information should be found on MF B355 or AF B296.)

Time in confinement awaiting present trial—a total of 27 days, of which NIL days were spent in hospital.(1)

(1. See RP 46(A) fn 2. Information should be found on MF B355 or AF B296 admitted in evidence under E2.)

Sentence Awarded by the Court :

To undergo Detention for the period of One Hundred and Twenty (120) days

(Sgd) ..... 25 SEP/45 (Sgd) ..... President. (RP 45, 50.)

Judge-Advocate, if any. Date awarded.

(See back of Convening Order as to assembly and disposal of record after trial.)

PART II. MINUTE WHERE CONFIRMATION RESERVED. (AA 54(5), RP 120(F), MML p 760.)

Date ..... (Sgd) ..... Commanding .....

PART III. DECISION OF CONFIRMING OFFR ON FINDING(S) AND SENTENCE.

(For duties and powers see AA 54, 57, RP 37(D) fn 6, 46(A), 51-56, 120, MML pp 759-761, KR Can 567-577. Acquittals require no confirmation and cannot be revised : AA 54(3). Sending back finding or sentence for revision by Court : AA 54(2), RP 120(G). If not confirmed, accused may be tried again : AA 157, MML p 64. Minute of confirmation or non-confirmation may be altered before promulgation : RP 53, MML p 65. Quashing after promulgation : KR Can 573. Duties and powers of reviewing offrs : AA 57, 57A, RP 53A, 54. The Confirming Offr must sign here personally. AA 172 fn 1.)

My decision on the finding(s) and sentence set forth in Part I is :

Confirmed

I ~~direct that the accused be not committed to prison or detention barracks until further orders.~~(1)

(1. AA 57A. Delete if not used.)

(Sgd) ..... Brigadier,

Commanding "C" Group,

Date 26 Sep 45 Commanding ..... Cdn. Reinforcement Units.

Confirming Officer.

PART IV. PROMULGATED AND EXTRACTS TAKEN. (RP 53, KR Can 576, 577.)

Accused.	Date.	Signature of Offr
B 19612 Tpr Fairbanks G.E.	28 Sep/45	MAJOR ADMIN. OFFR 2 C.G.R.U.

ALL DELETIONS AND ALTERATIONS WILL BE INITIALLED.

RECORDED AT CMHQ IN AD 100.

52-38

FIELD GENERAL COURT-MARTIAL

CPA66 (In lieu of AFA3) 40/P & S/1698 (5144) 4/38B

RECEIVED 12 OCT 1945 JAG BRANCH

Convened by Order of Brig. H.O.N. Brownfield, CBE, MC Comd "C" Gp., CRU dated 19 Sep 45.

ACCUSED.

(As to the trial of two or more charged jointly see RP 16, 71, 109. As to reasons for showing (a) permanent or confirmed and (b) apprnt, A/rank or A/appmt, if any, see AA 182, 183, fns, KR Can 308, 328, 330.)

Number.	(a) Prmnt R. (b) Appmt, A/R or A/Appmt.	Full Christian Names.	Surname.	Unit.
B.19612	TPR	GEORGE EDWARD	FAIRBANKS	2 CGRU

PROCEEDINGS REVIEWED

12 Oct 45 D/J Prod. Maj

REVIEWING OFFICER, JAG BRANCH

PROCEEDINGS OF TRIAL.

Held in the Fd in (country) England on (date) 25 SEP 45

RECORD FORM A—OPENING PROCEEDINGS AND ARRAIGNMENT.

A1. The President, Members, ~~waiting Member, JA, if any, and Offrs under instr, if any,~~ assemble, and the Court is closed.

(PRINTED MATTER, NOT IN ITALICS FOR GUIDANCE, WILL BE DELETED IF NOT USED OR APPLICABLE, AND INITIALLED BY PRES OR JA. The Schedule referred to throughout is on p 4. Citations do NOT include all relevant fmn ROs. For guidance on procedure when a variation in this form arises, see form for GCM in MML pp 741 to 759. A brief record of such variation will be made and given a number having reference to appropriate or preceding para number herein. See back of Convening Order, CF A95, for oaths and instrs on how to record addresses, evidence, etc, which instrs are hereafter called "Notes". As to general provisions for conducting the trial see AA 53, RP 56, 63-70, 73, 74, 94, 103, 119, 132.)

A2. The President initials and lays before the Court the Convening Order and Charge Sheet(1) attached thereto.(1) The Court is satisfied that it is properly convened and constituted(2), accused is (are) amenable to military law, and each charge discloses an offence.(3)

(1. As to use of Summary of Evidence see RP 17 fn 6. 2. AA 49, 50, RP 105-107. 3. RP 11-13, 23, 24.)

A3. The Court is opened. The accused is (are) brought before the Court. At 1130 hours trial commences.

A4. The Prosecutor produces a Medical Certificate that accused is (are) fit to undergo trial by court-martial.(1) ~~The Prosecutor informs the Court that accused elected to be tried by court-martial instead of being dealt with summarily by the CO.~~(2)

(1. KR Can 557. 2. AA 46(8), RP 60 fn 1. For effect see KR Can 563(c). Delete, if not applicable.)

~~A5. President to accused : Do you object to~~ ~~as interpreter ? Ans~~

~~The Interpreter is sworn.~~(1) Do you object to LOTA HAWKINS as shorthand writer ? Ans NO

The shorthand writer is sworn.(1)

(1. RP 72. Delete, if none employed.)

A6. The Convening Order and names of the President and Members of the Court are read to the accused.(1) President to accused : Do you object to be tried by me as President or by any of the Members of the Court ?

Ans NO ~~SIR~~(2)

(1. RP 110. 2. If no objection, waiting member retires. RP 68(B). If objection, see procedure AA 51, RP 25, 71, 18, MML p 742.)

A7. The President, Members, ~~JA, if any, and Offrs under instr, if any~~, are sworn.(1) The following are the ranks, names and units of the offrs comprising the Court, etc :

President	Lt-Col	D.L. BEDMAN	2 CGRU
Member	CAPT	A.C. HOLLAND	1 CGRU
Member	Lt	N.J. FRASER	1 CGRU
Judge-Advocate			
Prosecutor	Lt	G.E. ENNIS	2 CGRU
Defending Offr	Lt	W.W. WEST	2 CGRU

Questions by President : Is the Prosecutor a lawyer ? Ans YES Is the Defending Offr a lawyer ? Ans NO(2)

(1. RP 26, 27, 109, 111. List of offrs under instr will be returned separately with proceedings for information of Convr Offr.)
(2. If Pros a lawyer and Def Offr not, accused is entitled to an adjournment when RP 89 (B) and fn 2 were not followed. See DI p 3.)

A8. The accused ..... before arraignment make(s) (no) ~~(a)~~ plea .....(1)

(1. If a special plea is made for separate trial on one or more charges (RP 62(E), 108), or as to the jurisdiction of the Court (RP 34, 35(A), 113), or in bar of trial (RP 36), or as to accused's mental fitness to stand trial (AA 130, RP 37), or by one of several accused charged jointly to be tried separately (RP 16, 71), such plea, the addresses made in support or against, the evidence, if any, and finding are recorded per Notes. For forms of record see references in fns to RaP cited. Insert in AB rank and name of the accused making the plea.)

A9. The accused is (are) arraigned (separately) on all charges in the charge sheet.(1) The accused does (do) not object to any charge.(2) There is no amendment to be made to the Charge Sheet.(3) The President records the pleas in Part I of the Schedule.

(1. RP 31, 112. See para 1 of Instrs p 2. When more than one Charge Sheet see RP 62 ; when several accused to be tried separately see RP 71(C), and use separate copies of CF A96 to record proceedings. 2. RP 32, RP 33. If otherwise, delete and make appropriate record per Notes.)

A10. The Court (is closed and) considers the Instrs on Procedure after Arraignment at top of p 2. The proceedings are continued on Record Form 2.

PRESIDENT OR JA WILL INITIAL ALL DELETIONS AND ALTERATIONS.

SCHEDULE.

PART I. PLEA(S), FINDING(S) AND SENTENCE.

Accused: B.19612 Tpr. FAIRBANKS, G. E. - 2 CGRU.

Charge. (Insert "alternative" where applicable.)	Plea. (See Instrs p 2.)	Finding. (See note below.)	(Space for use as required for further charges, accused charged jointly, special findings, etc.)
1st AA Sec 15(1)	GUILTY	GUILTY	
2nd			
3rd			
4th			
5th			
6th			

(Note: As to findings for lesser offences see AA 56, RP 44; findings on alternative charges see MML p 483 fn 4 para 2, RP 44; special findings see RP 44 and MML p 753, and in loss of kit see RP 44 fn 6.)

~~At present under sentence for~~ ..... beginning on (date) .....(1)

(1. Insert sentence being served, or delete, if not applicable. See RP 46(A). Information should be found on MF B355 or AF B296.)

Time in confinement awaiting present trial—a total of 27 days, of which NIL days were spent in hospital.(1)

(1. See RP 46(A) fn 2. Information should be found on MF B355 or AF B296 admitted in evidence under E2.)

Sentence Awarded by the Court:

To undergo Detention for the period of One Hundred and Twenty (120) days.

(Sgd) ..... (Sgd) ..... President. (RP 45, 50.)

Judge-Advocate, if any.

23 SEP/45 Date awarded.

(See back of Convening Order as to assembly and disposal of record after trial.)

PART II. MINUTE WHERE CONFIRMATION RESERVED. (AA 54(5), RP 120(F), MML p 760.)

Date ..... (Sgd) ..... Commanding .....

PART III. DECISION OF CONFIRMING OFFR ON FINDING(S) AND SENTENCE.

(For duties and powers see AA 54, 57, RP 37(D) fn 6, 46(A), 51-56, 120, MML pp 759-761, KR Can 567-577. Acquittals require no confirmation and cannot be revised: AA 54(3). Sending back finding or sentence for revision by Court: AA 54(2), RP 120(G). If not confirmed, accused may be tried again: AA 157, MML p 64. Minute of confirmation or non-confirmation may be altered before promulgation: RP 53, MML p 65. Quashing after promulgation: KR Can 573. Duties and powers of reviewing offrs: AA 57, 57A, RP 53A, 54. The Confirming Offr must sign here personally. AA 172 fn 1.)

My decision on the finding(s) and sentence set forth in Part I is:

Confirmed

I ~~direct that the accused be not committed to prison or detention barracks until further orders~~.(1)

(1. AA 57A. Delete if not used.)

(Sgd) ..... Brigadier,
Commanding "C" Group,
Cdn. Reinforcement Units.

Date 26 Sep 45. Commanding ..... Confirming Officer.

PART IV. PROMULGATED AND EXTRACTS TAKEN. (RP 53, KR Can 576, 577.)

Accused. Date. Signature of Offr

B.19612 Tpr Fairbanks G.E. 28 Sep 45 MAJOR. ADMIN. OFFR. 2 C.G.R.U.

ALL DELETIONS AND ALTERATIONS WILL BE INITIALLED.

RECORDED AT CMHQ in AD 160

52-38

CFA96 (In lieu of AFA8) 40/P & S/1698 (6144) 4/38B

FIELD GENERAL COURT-MARTIAL

RECEIVED 12 OCT 1945 JAG BRANCH Number

Convened by Order of Brig. H.O.N. Brownfield, CBE, MC Comd "C" Gp., CRU dated 19 Sep 45.

ACCUSED.

(As to the trial of two or more charged jointly see RP 16, 71, 109. As to reasons for showing (a) permanent or confirmed and (b) appmt, A/rank or A/appmt, if any, see AA 182, 183, fns, KR Can 308, 328, 330.)

Number.	(a) Prmnt R. (b) Appmt, A/R or A/Appmt.	Full Christian Names.	Surname.	Unit.
B.19612	TPR	GEORGE EDWARD	FAIRBANKS	2 CGRU

PROCEEDINGS REVIEWED

12 octus H.D. Brody Maj

REVIEWING OFFICER, JAG BRANCH

PROCEEDINGS OF TRIAL.

Held in the Fd in (country) England on (date) 25 SEP 45

RECORD FORM A—OPENING PROCEEDINGS AND ARRAIGNMENT.

A1. The President, Members, ~~waiting Member, JA, if any, and Offrs under instr, if any,~~ assemble, and the Court is closed.

(PRINTED MATTER, NOT IN ITALICS FOR GUIDANCE, WILL BE DELETED, IF NOT USED OR APPLICABLE, AND INITIALLED BY PRES OR JA. The Schedule referred to throughout is on p 4. Citations do NOT include all relevant fmn ROs. For guidance on procedure when a variation in this form arises, see form for GCM in MML pp 741 to 759. A brief record of such variation will be made and given a number having reference to appropriate or preceding para number herein. See back of Convening Order, CF A95, for oaths and instrs on how to record addresses, evidence, etc, which instrs are hereafter called "Notes". As to general provisions for conducting the trial see AA 53, RP 56, 63-70, 73, 74, 94, 103, 119, 132.)

A2. The President initials and lays before the Court the Convening Order and Charge Sheet(s) attached thereto.(1) The Court is satisfied that it is properly convened and constituted(2), accused is (are) amenable to military law, and each charge discloses an offence.(3)

(1. As to use of Summary of Evidence see RP 17 fn 6. 2. AA 49, 50, RP 105-107. 3. RP 11-13, 23, 24.)

A3. The Court is opened. The accused is (are) brought before the Court. At 1130 hours trial commences.

A4. The Prosecutor produces a Medical Certificate that accused is (are) fit to undergo trial by court-martial.(1) ~~The Prosecutor informs the Court that accused elected to be tried by court-martial instead of being dealt with summarily by the CO.~~(2)

(1. KR Can 557. 2. AA 46(B), RP 60 fn 1. For effect see KR Can 563(c). Delete, if not applicable.)

~~A5. President to accused:~~ Do you object to ~~as interpreter~~? Ans .....

~~The Interpreter is sworn.~~(1) Do you object to 23326 SGT A.H. SINCLAIR as shorthand writer? Ans NO

The shorthand writer is sworn.(1)

(1. RP 72. Delete, if none employed.)

A6. The Convening Order and names of the President and Members of the Court are read to the accused.(1) President to accused: Do you object to be tried by me as President or by any of the Members of the Court?

Ans NO SIR(2)

(1. RP 110. 2. If no objection, waiting member retires. RP 68(B). If objection, see procedure AA 51, RP 25, 71, 18, MML p 742.)

A7. The President, Members, ~~JA, if any, and Offrs under instr, if any~~, are sworn.(1) The following are the ranks, names and units of the offrs comprising the Court, etc:

President	LT-COL	D.L. BEDMAN	RCOCRU
Member	CAPT	A.C. HOLLAND	1 CGRU
Member	LT	H.S. FRASER	1 CGRU
Judge-Advocate			
Prosecutor	LT	C.E. ENNIS	2 CGRU
Defending Offr	LT	W.W. WEST	2 CGRU

Questions by President: Is the Prosecutor a lawyer? Ans YES Is the Defending Offr a lawyer? Ans NO(2)

(1. RP 26, 27, 109, 111. List of offrs under instr will be returned separately with proceedings for information of Conv Offr.)
(2. If Pros a lawyer and Def Offr not, accused is entitled to an adjournment when RP 89 (B) and fn 2 were not followed. See DI p 3.)

A8. The accused ..... before arraignment make(s) (no) plea(s)(1)

(1. If a special plea is made for separate trial on one or more charges (RP 62(E), 108), or as to the jurisdiction of the Court (RP 34, 35(A), 113), or in bar of trial (RP 36), or as to accused's mental fitness to stand trial (AA 130, RP 57), or by one of several accused charged jointly to be tried separately (RP 16, 71), such plea, the addresses made in support or against, the evidence, if any, and finding are recorded per Notes. For forms of record see references in fns to RsF cited. Insert in AB rank and name of the accused making the plea.)

A9. The accused is (are) arraigned (separately) on all charges in the charge sheet.(1) The accused does (do) not object to any charge.(2) There is no amendment to be made to the Charge Sheet.(3) The President records the pleas in Part I of the Schedule.

(1. RP 31, 112. See para 1 of Instrs p 2. When more than one Charge Sheet see RP 62; when several accused to be tried separately see RP 71(C), and use separate copies of CF A96 to record proceedings. 2. RP 32, RP 33. If otherwise, delete and make appropriate record per Notes.)

A10. The Court (is cleared and) considers the Instrs on Procedure after Arraignment at top of p 2. The proceedings are continued on Record Form B.

PRESIDENT OR JA WILL INITIAL ALL DELETIONS AND ALTERATIONS.

INSTRUCTIONS ON PROCEDURE AFTER ARRAIGNMENT.

1. *The accused may not plead or be found Guilty on more than one of two or more charges laid in the alternative (RP 37(A).) As to withdrawal of alternative charges by Prosecutor see RP 35(C). No other charge can be withdrawn for any reason without authy from Convening Offr. If Convening Offr concurs, Court may accept plea of Guilty to lesser, etc, offence. (RP 44(H).) Accused may change a plea of Not Guilty to Guilty during trial. (RP 38.) As to refusing to plead or not pleading intelligibly see RP 35(A). As to plea when sentence may be death see RP 35(D).*

2. *The proceedings on each charge sheet (RP 62) after arraignment will be conducted as follows in the respective circumstances stated:*

I. If pleas to all charges are GUILTY, use Record Form B below.

II. If pleas to all charges are NOT GUILTY, use Record Form D on p 3.

III. If pleas to some charges are GUILTY and to other charges are NOT GUILTY and,

(a) Such mixed pleas occur when there are no alternative charges in the Charge Sheet, use Record Form C below. (RP 37(A).)

(b) Such mixed pleas occur in a set of two or more charges laid in the alternative, see RP 37 (A) and fn 2 as to discretion of Court, (i) to try the accused on all such alternative charges as if he had pleaded Not Guilty thereto, or, (ii) to record the pleas as the findings of Court. After deciding between (i) and (ii), Court will proceed under foregoing instrs as may be appropriate to result of its decision. See MML p 744 Instrs (2).

3. *As to responsibility of President to accused see RP 59, 60(C); powers and duties of JA see RP 103; duty of Prosecutor see RP 60(A) (B); duty and privileges of accused and Defending Offr see RP 60(C), 87(C), 91, 92; swearing and withdrawal of witnesses from Court see RP 81, 82; questioning of accused see RP 80, 87(C), 92(B), and of witnesses see RP 83-85; calling or re-calling of witnesses by Court, etc, see RP 75-79, 86, 116; use of Summary of Evidence at Trial see RP 17(E) fn 6; and responsibility of JA or Pres to record proceedings see RP 94, 96.*

RECORD FORM B—PROCEEDINGS ON PLEAS OF GUILTY TO ALL CHARGES.

B1. The President ~~or JA, if any,~~ complies with RP 35(B) by explaining to the accused the nature and meaning of the charge(s)(1), and that on his plea of Guilty there will be no regular trial but merely a consideration of the sentence to be awarded after he has been given an opportunity to make a statement in reference to the charge(s), call witnesses as to character and make an address in mitigation of punishment.(2)
(1. RP 35 fn 3. 2. MML p 54 para 47.)

B2. President to accused: The Court will now receive any statement you desire to make in reference to the charge(s).(1) If it appears from your statement that there are circumstances which indicate that you do not understand the effect of the plea of Guilty(2), or which show provocation or extenuation in respect of which in your interest the witnesses for the Prosecution should be examined(3), we shall advise you to change your plea to Not Guilty. In making a statement you will not be sworn or subject to cross-examination; and anything you say will not be used in evidence against you after you change your plea. If, however, it appears to the Court that your statement affects only the amount of punishment to which you are liable, you will not be advised to change your plea and you will be given an opportunity later to prove your statement by sworn testimony, if you so desire.(4)

President to accused: Do you wish to make a statement? Ans. NO SIR (5)
(1. RP 37(B). 2. RP 37(D) fn 6. 3. RP 35(B) fn 5 para 3, MML p 54 para 47. 4. See para E3 of Record Form E.
5. Statement, if any, recorded per Notes.)

B3. ~~The Court considers the accused's statement.(1) The Court decides (not) to advise accused to change his (their) plea(s) of Guilty to Not Guilty on charge(s). The accused is (are) so informed, and he (they) change(s) his (their) plea(s) on charge(s). Part I of the Schedule is amended accordingly.~~
(1. Court may be closed to consider the statement. Delete whole or part not used.)

B4. On the charge(s) to which the plea(s) of Guilty is (are) not changed the President records finding(s) of Guilty in Part I of the Schedule.(1)
(1. RP 35(B). If any plea(s) is (are) changed, use Record Form C or D as appropriate.)

B5. The Summary of Evidence is marked Ex A to F, initialled and read aloud by the President.(1)
(1. If there is no Summary, or if it is inadequate, comply with RP 37(B). If there is any evidence inconsistent with any plea standing as Guilty, Court will advise accused to change such plea and, if changed to Not Guilty, try such charge(s) by use of paras D1 to D8 inclusive of Record Form D on p 3. RP 37(D).)

B6. The accused having been found Guilty on one or more of the charges, the proceedings are concluded by using Record Form E on p 3.

RECORD FORM C—PROCEEDINGS ON MIXED PLEAS OF GUILTY AND NOT GUILTY.

C1. As to the charges on which accused pleaded NOT GUILTY the trial is continued by using paras D1 to D8 inclusive of Record Form D on p 3 before proceeding with C 2.(1)
(1. RP 37(A) (E).)

C2. The charges on which accused pleaded GUILTY are read to him (them) again, and the trial is continued by using paras B1 to B5 of Record Form B above.(1)
(1. Under B5 such parts only of the Summary of Evidence are read as relate to the charges dealt with under C2. If any plea is changed to Not Guilty, trial thereon proceeds by complying with paras D1 to D8 inclusive in Record Form D on p 3 and making an appropriate record thereof on a separate sheet.)

C3. The accused having been found Guilty on one or more of the charges, the proceedings are concluded by using Record Form E on p 3.

PRESIDENT OR JA WILL INITIAL ALL DELETIONS AND ALTERATIONS.

RECORD FORM D—PROCEEDINGS ON PLEAS OF NOT GUILTY TO ALL CHARGES.

D1. President to accused: Do you wish to apply for an adjournment on the ground that any of the rules relating to procedure before trial have not been complied with, and that you have been prejudiced thereby, or on the ground that you have not had sufficient opportunity to prepare your defence? Ans.....(1)
(1. If "yes", see RP 39(A) for procedure. Statement or evidence, if any, is recorded per Notes.)

D2. The Prosecutor makes (an) (no) opening address.(1)
(1. RP 39(B), 60(A) (B), 90, 92(C) (D). Record address per Notes, subject to RP 95(C).)

D3. The evidence for the Prosecution is taken.(1)
(1. RP 39(C), 114, KR Can 555. Record evidence per Notes. As to Prosecutor giving evidence himself see RP 39(D) (E).)

D4. The Prosecution is closed.(1) The Defending Offr submits that the evidence for the Prosecution does not establish a prima facie case against the accused on the.....charge(s).(2) The Court is closed, and considers the submission.(3) The Court is re-opened, and the President announces that the submission is disallowed on the.....charge(s), and allowed on the.....charge(s), and that, accordingly, the trial will proceed on the former, but the accused is (are) found Not Guilty on the latter charge(s).(4)
(1. Delete remainder of this para, if submission not made. 2. Arguments on submission, answer and reply are recorded per Notes. 3. RP 40 fn 1. See MML p 72 paras 12-14 and p 81 para 42. 4. Delete part not used. If accused acquitted on all charges, use second alternative in para D8.)
NB: If trial proceeds, accused must be allowed great latitude in making his defence, and the Court should not stop his defence solely on ground of irrelevance. (RP 60(C), 114, 115.)

D5. President to accused: You will now proceed with your defence.(1) You may, if you wish, give evidence yourself on oath as to the facts or your character or both, in which case you will be subject to cross-examination.(2) You may, however, make a statement without being sworn, and you will not be subject to cross-examination.(3) But a statement which could have been made on oath will not carry with the Court the same weight as sworn testimony.(4) You may call witnesses in your defence and as to character, whether you give evidence or make a statement or do neither.

President to accused: Do you wish to give evidence yourself as a witness, make a statement, or do neither? Ans..... Do you intend to call witnesses on your behalf? Ans..... Are they witnesses as to character only? Ans.....
(1. RP 115. 2. RP 40(A), see 80(D). 3. RP 40 fn 10. 4. RP 40 fns 2, 9.)

D6. Consequent on the answers recorded in para D5 the appropriate procedure for the defence is followed.(1)
(1. RP 114, 115, 116. For procedure see Notes on back of Convening Order, CF A95. Evidence for accused as to his character should, if in his interest, be given before the finding. See RP 46(A) fn 1, 86(C). Note the further opportunity in para E1 of Record Form E. Record per Notes addresses, statement, evidence and any summing up by the JA under RP 42, 103(e).)

D7. The Court is closed to consider the finding(s).(1) The finding(s) of the Court is (are) recorded in Part I of the Schedule.(2) The Court is re-opened.
(1. RP 43, 117(A). See Notes in Part I of Schedule. 2. RP 44(A).)

D8. The President announces the finding(s), if any, of Not Guilty, and states to the accused that the finding(s) of the Court on the.....charge(s), being subject to confirmation, will be promulgated later.(1)
Or, The President announces that the accused is found Not Guilty on all charges and is to be released forthwith, and that the proceedings are accordingly terminated. Part I of the Schedule is dated and signed.(2)
(1. AA 54(3) (6), RP 45, 120(A). 2. AA 54(3), RP 45, 117. This alternative announcement is not applicable when there are pleas of Guilty outstanding and dealt with under Record Form B or C.)

D9. The accused having been found Guilty on one or more of the charges, the proceedings are concluded by using Record Form E below.

RECORD FORM E—PROCEEDINGS ON CONVICTION BEFORE SENTENCE.

E1. President to accused: Do you wish to give evidence yourself or to call any witnesses as to your character?(1)
Ans. NO SIR
(1. If evidence has already been given by accused or his witnesses as to his character, delete this para. RP 37(C) fn 4, 46 fn 1. Accused and witnesses are sworn. Evidence recorded per Notes.)

E2. The Prosecutor produces Statement(s) as to Character and Particulars of Service(1), and certified true copy (copies) of Conduct Sheet(s)(2), purporting to refer to the accused, which he submits to the Defending Offr for examination, and then to the Court for admission in evidence. The Court is satisfied that these documents refer to the accused, because (i) they purport to be signed in the manner required by AA 163(l) (g) (h), and (ii) they purport to refer to (a) soldier(s) having the same number, rank, name and corps as the accused. Admitted in evidence and marked Ex B and Ex C respectively.(3)
(1. MFB 355 or AFB 296. 2. MFM 6. 3. RP 46, KR Can 558. If above documents not produced, see RP 46 fn 1 para 1.)

E3. President to accused: Do you wish to address the Court on the Statement(s) and Conduct Sheet(s), and in mitigation of punishment?(1) Ans. My Record's (NOT AT ALL).(2)
(1. RP 37(C), 46(D). 2. Address, if any, recorded per Notes. Court should permit accused or his witnesses to prove on oath anything here or previously stated which would affect the amount of punishment. RP 37(F) fn 7.)

E4. The President states that the Court is closed to consider the sentence, and that the sentence to be awarded by the Court, being subject to confirmation, will not be announced, but will be promulgated later, and the proceedings in open court are accordingly terminated.(1)
(1. AA 54(6), RP 120(A).)

E5. The Court considers the sentence.(1) The President records the sentence in Part I of the Schedule, which is dated and signed by him ~~and the JA, if any.~~(2)
(1. When several accused tried separately see RP 71 (D). One sentence only, comprised of the punishment or punishments laid down in AA 41, 44 and its proviso, is to be awarded to cover all charges in all charge sheets on which accused found guilty. RP 48. As to sentences see AA 44, 138, 182, RP 46-50, 69, 118, 119(A), KR Can 308, 330, 563-566, Overseas RO 309, 2323, MML p 60, 737-759. As to sentences assigned for civil offences by the law of England see AA 41(5), MML p 130. When accused already under sentence of imprisonment or detention see AA 44(18), 68(1), KR Can 564. 2. RP 50. As to release from arrest by Confirming Offr see KR Can 567. As to assembly and disposal of record after trial see instrs on back of Convening Order.)

PRESIDENT OR JA WILL INITIAL ALL DELETIONS AND ALTERATIONS.

CHARGE SHEET

The Accused, B19612 Tpr George Edward FAIRBANKS Royal Canadian Armoured Corps, on the strength of No. 2 Canadian General Reinforcement Unit, a soldier of the Canadian Army Overseas,

is charged with

FIRST CHARGE — WHEN ON ACTIVE SERVICE

AA Sec 15(1) — ABSENCE WITHOUT LEAVE

in that he,

in the Field, did absent himself without leave from 2130 hrs 13 May 45 from his Unit until apprehended at 0001 hrs 18 Jul 45.

(Absent 65 days, 2 hours, 31 minutes)

Dated at Bordon, Hants, this 15th day of September 1945.

(W.A. TOWNSLEY) Col RCA
Commanding Officer
No. 2 Cdn Gen Rft Unit

To be tried by Field General Court-Martial.

Commanding. 10th Group., Cdn Reinforcement Units
(Convening Officer)

Brigadier

Bordon, Hants.
19 Sep 45

FIELD GENERAL COURT-MARTIAL

(Whether the accused to be tried is under his comd or not, a FGCM may on application to him be convened by any offr of Cdn Army Overseas, or of any other force if authorized in law, in immediate comd of troops on active service, subject to RP 105(C) and restrictions imposed by appropriate authy. AA 49, 50, RP 104-107, 114. As to the duties and privileges of the Convening Offr in dealing with the application see MML Chap V paras 20 and 23, RP 87(B).

There should be a separate Convening Order for each person to be tried separately by the same Court. RP 71(C), 109. As to separate charge sheets see RP 62, and as to separate trial on charges in the same charge sheet see RP 108. As to two or more accused charged jointly see RP 16, 109. As to reasons for showing (a) permanent or confirmed rank, and (b) appmt, A/rank or A/appmt, if any, see AA 182, 183, fns, KR Can 308, 328, 330.)

ACCUSED.

Number.	(a) Prmnt R.	(b) Appmt, A/R or A/Appmt.	Full Christian Names.	Surname.	Unit.
B-19612	Tpr		George Edward	FAIRBANKS	2 CGRU

CONVENING ORDER.

1. Whereas complaint has been made to me, the undersigned, that the person named above as the accused, being subject to military law, has committed the offence set forth in the Charge Sheet attached and on (*date*) this date endorsed by me, "To be tried by Field General Court-Martial". 11G

2. And whereas I am of opinion that it is not practicable that such offence should be tried by an ordinary General Court-Martial; [redacted] 11G

(Delete part in brackets when not required for compliance with RP 105(C).)

3. I hereby convene a Field General Court-Martial to try the said person, and to consist of the Offrs appointed or detailed hereunder.

4. [redacted] 11G

(AA 49, RP 106(B), 107(A). Delete the whole or part, if not applicable.)

5. [redacted] 11G

(RP 106(E). Delete, if none appointed.)

PRESIDENT.

(Rank.)	(Must be named. RP 106.)	(Unit.)
Lt-Colonel	D.L. Redman, VD	HQ CRU

MEMBERS.

(Rank.)	(Named or detailed. RP 106.)	(Unit.)
Captain	To be detailed by CO	1 CGRU
Lieutenant	To be detailed by CO	1 CGRU

WAITING MEMBER.

(Rank.)	(Named or detailed, if any. RP 106.)	(Unit.)

JUDGE-ADVOCATE.

(Rank.)	(Must be named, if any. RP 106.)	(Unit.)

On Active Service in the Fd

in ENGLAND (Country.)

(Signed personally. RP 105 fn 2.) Brigadier (Rank.)

Date 19 Sep 45

Commanding "C" Group, Cdn Mft Units

Convening Officer.

CONVENING OFFR WILL INITIAL ALL DELETIONS AND ALTERATIONS

(See overleaf for oaths and notes for use on trial.)

Medical Officers' Certificate
K.R. (Can) Para 557

I certify that I have this morning examined No B19612 (Rank) Jas. Fairbanks G.C. (name)

of #2 CGRU and in my opinion he is ~~unfit~~ fit to undergo

trial by Court Martial.

Station Field

Date 25-9-45

Sgd. J.S. Sherwick Capt.
(Medical Officer)

25 Sept 45

Plea of Mitigation

B19612 Dpr. George Edward Fairbanks a soldier of the Canadian Army Overseas enlisted on 10 June 41 and arrived in the U.K. with First Hussars 6th C.A.R. November 1941.

Dpr Fairbanks is 30 years of age, married with two children, apart from this he has no other living relatives Being orphaned at a very early age he did not have the advantage of education as most others did. However inspite of this handicap this man went a long way in furthering his knowledge, both in civilian life and in the army. Prior to enlistment this man had approximately 200 men in his charge working in a gold mine. For the first time in his life he felt financially secure. The war came however and he gave up his security — to serve his country in the armed forces.

Since Dpr Fairbanks joined the army his character, apart from a few petty crimes has been exemplary. While in the U.K. he qualified in various trades, L.M. "A & B" Motor Mech & Driver A.F.V. He was sent on a further course to qualify as a Tank Driver. During this course he suffered a broken leg, and as a result of this, spent "5" days in a hospital. Towards the end of June 44 he was discharged from

the hospital and posted to No 2 CACRC.
While at 2 CACRC this soldier was interviewed and was told that he be held there as an instructor. He disliked the idea, because he wanted to rejoin his unit, which was now in France. During this period he committed an A.W.L. offence. But that offence was dealt with regimentally. This offence had this effect, in that Fairbanks was posted to his Original unit at the end of July 44.

From July 1944 this soldier saw continuous service, until wounded in Germany on 31st of March 45. He was evacuated to 24th C.C.S. England. On 3 April 45 he was sent to Romsey Park convalescent Hospital, where on 12 Day he was granted a 48 hrs pass, during the period he is reported absent, and from which this soldier did not return until apprehended.

During this space in the army, this soldier went through severe mental strain due to family troubles at home. However he never once faltered, until the cessation of hostilities in Europe. The wife of this man, who gave birth to an illegitimate child and forgiven, has not written to him for the past 2½ years. He tried to find the whereabouts of his wife and two children but never succeeded. He found the Corp dearly ~~loved~~, they were everything in his world of possessions. He lost them. With them lost, his world was lost too.

after enduring this mental anguish for all these years, this soldier took to drinking, got mixed up with bad company until finally apprehended by civilian police.

In view of the fact that the character of the accused has been proven to be exemplary throughout the army service, and in view of the fact that the accused sustained such mental shock through the loss of his wife and children, I recommend that this court would exercise utmost leniency in promulgation of sentence. Furthermore, I hope the court will take into consideration, the two months and seven days already spent under close arrest by the accused.

I stand upon

W B Black 2nd Lt Ord

SUMMARY OF EVIDENCE in the case of B19612 Tpr George Edward FAIRBANKS, on the strength of "D" Wing, No. 2 Canadian General Reinforcement Unit, a soldier of the Canadian Army Overseas.

By direction of the Commanding Officer, the Summary of Evidence is taken on oath.

FIRST WITNESS for the Prosecution

L101573 Sjt Heavisides, J.D. "D" Wing Orderly Room Sergeant, No. 2 Canadian General Reinforcement Unit, Canadian Army Overseas, having been duly sworn, states:

I am L101573 Sjt Heavisides, J. D. of No. 2 Canadian General Reinforcement Unit, "D" Wing Orderly Room Sjt., and as such I produce from the Wing Orderly Room files the following documents, which have been shown to the Accused:

The first document, which is marked Exhibit "A", is a Certified True Extract from "Y" List No. 1 Canadian Reception Depot Part II Orders No. 99, dated 9 Jun 45, which declares in Section "B", Para 7, Subpara (g) that D19612 Tpr Fairbanks G. E., was declared by a Court of Inquiry to have absented himself without leave at 2130 hrs 13 May 45 from his Unit.

The second document, which is marked Exhibit "B", is a Certified True Extract from No. 1 Canadian General Reinforcement Unit Part II Orders No. 207, dated 31 Aug 45, which declares in Section "B", Para 1, Subpara (w), that B19612 Tpr Fairbanks, G.E., was apprehended at 0001 hrs 18 Jul 45.

.....
(L101573 Sjt Heavisides J.D.)

The Accused declines to cross-examine this Witness.

.....
(B19612 Tpr Fairbanks G.E.)

The Accused was cautioned as follows:

Do you wish to make any statement or to give evidence on oath? You are not obliged to say anything, or to give evidence unless you wish to do so, but whatever you say, or any evidence you give will be taken down in writing, and may be given as evidence.

The Accused declines to make a statement and reserves his defence.

.....
(B19612 Tpr Fairbanks G.E.)

I certify that the foregoing Summary of Evidence, consisting of one (1) page and two (2) Exhibits, was taken down by me in the presence and hearing of the Accused, and that Rules of Procedure 4 (c) (d) (e) and (f) have been complied with.

Bordon, Hants
15 Sep 45

.....
(C. E. Ennis) Lieut RCA
Officer detailed to take the Summary of Evidence.

EXHIBIT "A"

Certified True Extract from No. 1
Canadian Reception Depot Part II
Order No. 99 dated 9 Jun 45.
("Y" List).

"Y" LIST

NO. 1 CANADIAN RECEPTION DEPOT
PART II ORDERS
ISSUED BY
Lt.Col. H.H.F. BACK, E.D. (CAC)

Last Order
No. 98
8 Jun 45

This Order
No. 99
9 Jun 45

SECTION "B"

7. STRENGTH DECREASE:

(g) SOS as a deserter wef 5 Jun 45. Having been declared illegally absent from 21.30 hrs 13 May 45, by a Court of Inquiry held at R.W.C.H. Deficiencies in Kit $6.66.

D19612 Tpr FAIRBANKS G.E. (Veh Mech AFV"B") 1 CAR

(Sgd) "J.J. DUFFY Lieut"
for (A.E. FORTH) Major
A/Officer Commanding
No. 1 Cdn Reception Depot

CERTIFIED TRUE EXTRACT FROM ORIGINAL DOCUMENT HELD IN MY POSSESSION.

4 Sep 45

(J.H. STEPHEN) Capt RCA
Records Officer, No. 2 CGRU
Officer having custody of
the original document.

EXHIBIT "B"

Certified True Extract from 1 C.G.R.U. (Overseas)
Daily Order Part II No. 207 dated 31 Aug 45

NO 1 CANADIAN GENERAL REINFORCEMENT UNIT

Last Order issued	Daily Part II Orders issued by	THIS ORDER
No 206		NO 207
30 Aug 45	LT-COL E PARTINGTON A/COMMANDER	31 Aug 45

SECTION "B" OTHER RANKS

1. STRENGTH INCREASE

(w) TOS on apprehension from desertion at 0001 hrs 18 Jul 45
B 19612 Tpr FAIRBANKS G E RCAC Veh Mech AFV"B"

(Sgnd) "W. Murray, Capt & Adjt"
for (E PARTINGTON) Lt-Col
A/Commander
No 1 Cdn Gen Rft Unit

CERTIFIED TRUE EXTRACT FROM ORIGINAL DOCUMENT HELD IN MY POSSESSION

12 Sep 45.

Lieut. J.N. Burnham,
Records Officer
No. 1 C.G.R.U.

ARMY FORM B.296 (WAR).

Statement as to Character and Particulars of Service of Accused.

(For Use at Trials by Field General Courts-Martial only).

Number.	*Rank.*	*Name.*	*Regiment (or as the case may be).*
B19612	Tpr	FAIRBANKS G. E.	No. 2 C G R U

NOTE.—The Field Conduct Sheet is to be produced in Court with this statement but is not to be annexed to the proceedings. The numbers herein stated should correspond with the number of Entries in the Field Conduct Sheet, prominence being given to the most serious offence in each entry. If the charge is for drunkenness or absence without leave, the entries for drunkenness or absence, as the case may be, should be stated separately. Any recognised special acts of gallantry or distinguished conduct recorded on the Field Conduct Sheet should also be inserted here.

1. The following is a fair and true summary of the entries in the Field Conduct Sheet of the accused, exclusive of convictions by a court martial or a civil court :—

For AA Sec 15 (1) AWL ... 6 times.

For AA Sec 10(4) Breaking out of Barracks ... 1 times.

For AA Sec 40, failed to get up at Reveille ... 1 times.

For AA Sec 24(2) losing by neglect ... 1 times.

Date of first entry in Field Conduct Sheet 3 Oct 42

Date of last entry in Field Conduct Sheet 29 Aug 45

2. Previous convictions of the accused by a court martial or a civil court are set out in the Schedule overleaf.

*Strike out if not applicable.

3. [redacted]

4. The accused has been awaiting trial on the present charges for ... days in civil custody; and for 27 days in military custody, *i.e.*, 0 days in open arrest, 27 days in close arrest; of which 0 days were spent in hospital.

5. The present age of the accused is 30 yrs 2 mos 23 dys

6. The date of his attestation is 10 Jun 41

7. The service which the accused is allowed to reckon is 4 yrs 3 mos 15 dys

‡State the military decorations (if any) held by accused.

8. The accused is in possession of‡ CVSM & Clasp

9. [redacted]

Date of Promotion.

[redacted]

INSTRUCTION.—*If any matter in any of the above paragraphs cannot be stated from the regimental books the paragraph must be struck through.*

(*28079) Wt.30721/5701 82,000 9/44 A.& E.W.Ltd. Gp.698

SCHEDULE OF CONVICTIONS BY A COURT-MARTIAL OR CIVIL COURT.

Description of Court by which tried.	Date and Place of Trial.	Charges upon which convicted.	Sentence of the Court.	Punishment remitted or sentence suspended.
London Court of Sessions	29 Aug 45 London	Breaking & entering (civil charge)	Released on own recognizance for 12 months	

I HEREBY CERTIFY that the foregoing particulars, which have been extracted from the regimental books in my custody, are correct to the best of my knowledge and belief.

Signed this 25th day of September 1945.

G.C. Smith Major
Officer in charge Record 2C6KU

No. B19612 Name FAIRBANDS, G.E. Sqn, Battery, or Company — Corps CAC — Date of enlistment 10-6-41 — GC Badges — Service or Proficiency Pay — 3/17 MFM 6 (AFH 122) 40/P&S/136 (7010)

Date of last entry in Company Conduct Sheet — No. and date of last drunk Nil — Period not reckoning towards freedom from extra fine — Sheet No. 1 — Signature OC Company, etc — Character

Place	Date of offence	Rank	Cases of drunkenness	OFFENCE	Names of Witnesses	Punishment awarded	Date of award or of order dispensing with trial	By whom awarded	Remarks
FIELD	27Sep 42	Tpr		A.A. 10 (4) Breaking out of bks while under open arrest.	P1662 Sjt. Mann, N A-6 Sjt. Waugh, K.G.	7 days pay	3-10-42	Lt-Col RHF Back	Forf 7 days pay under FR&I 149(2)
FIELD	27Oct 42	Tpr		AA 40 "Conduct to the Prejudice Failed to get up at reveille.	A209 Cpl. Branton K.J. A219 L/Sjt. Gristey, W.H.	Five days C.B.	28-10-42	Captain R.C. Lane	
FIELD	21Jan 43	Tpr.		AA 24(2) Losing by Neglect his Equipment. Was deficiant one pistol No. 799271. (Value £4-10-6)	A614 SQMS Clarke JW A385 Cpl Bailey JM	14 days CB	2-2-43	Major FWK Bingham	Forf £4-10-6 under FR&I 158 (2)

(PTO)

Place	Date of offence	Rank	Cases of drunkenness	OFFENCE	Names of Witnesses	Punishment awarded	Date of award or of order dispensing with trial	By whom awarded	Remarks
FIELD	28Feb 43	Tpr		AA 15(1) in that he was AWL from 0630 hrs 28 Feb 43 to 2330 hrs 28 Feb 45. Time: 17 hrs.	A55100L/Cpl Dahn, M. A385 Cpl Bailey, J.M.	3 days pay	2-3-43	Lt-Col RHF Back	Forf 3 days pay FR&I 149(2) 1day FR&I 149(1)(a)
FIELD	31May 43	Tpr		AA 15(1) in that he was AWL from 0600 hrs 31 May 43 to 1900 hrs 31 May 43. Total Time 13 hrs.	A26 Sjt. Pimblett, RH A511 L/Cpl Beard, D.A.	6 days pay	2Jun43	Major FE White	Total Forf 4 days pay under FR&I 149 (2).
FIELD	28Aug 43	Tpr.		AA 15 (1) WOAS AWL from 0930 hrs 29-8-43 to 0755 hrs 30-8-43(22 hrs 25 mins)	L/Sgt. Smith	2 days CB	31-8-43	Capt VH Knox	Forf 1 days pay FR&I 149 (1) a
FIELD	26Feb 44	Tpr		AA 15(1) WOAS AWL 2200 hrs 26 Feb 44 to 0745 hrs 28 Febe44 Total Time 1day 9 hrs, 45 mins.	Cpl Watters	Forf 10 days pay FR&I 148(2)c.	28Feb44	Major DC O'Brien	Forf 2 dys pay FR&I149(1)A FR&I10dayspay 149(2)

No. B19612 Name FAIRBANKS G E | Sqn, Battery, or Company | Corps CAC | Date of enlistment 10-6-41 | GC Badges | Service or Proficiency Pay | 3/17 MFM 6 (AFB 122) 40/P&S/136 (7010)

Date of last entry in Company Conduct Sheet | No. and date of last drunk | Period not reckoning towards freedom from extra fine | Sheet No. 2 | Signature OC Company, etc | Character

Place	Date of offence	Rank	Cases of drunkenness	OFFENCE	Names of Witnesses	Punishment awarded	Date of award or of order dispensing with trial	By whom awarded	Remarks
FIELD	22 Jul 44	Tpr		AA Sec 15(1) AWL from 2230 hrs 22 Jul to 0745 hrs 24 Jul 44 Absent 1 day 9 hrs 45 mins.	Documentary Tpr Francis L/C Stockie Tpr Fraser	Forf 7 days pay AA Sec 46(2)c	27 Jul 44	Col J H Ferry	Forf 2 days pay 149(1)a & 7 days pay FR&I 149(2)
FIELD	9 Jul 44	Tpr		AA 15 (1) WOAS AWL from 2300 hrs 9-7-44 till app at 0130 hrs 19-7-44 (9 days 2 hrs 30 mins) COA £1-17-6	Ext 1 COMERU DO 179 d/22 Jul 44 as amended by DO 182 d/26-7-44	Admonished	21-7-44	OC No. 1 COMERU	Forf 10 days pay FR&I 149(1)a stoppage of pay of £1-17-6 COA

(PTO)

Place	Date of offence	Rank	Cases of drunkenness	OFFENCE	Names of Witnesses	Punishment awarded	Date of award or of order dispensing with trial	By whom awarded	Remarks
London	18 Jul 45	Tpr		Breaking & entering (civil offence")		released on own recognizance for 12 months	29 Aug 45	London Court of Petty Sessions	

CERTIFIED TRUE COPY OF ORIGINAL MFM 6 HELD IN MY POSSESSION

(G.C. SMITH) Maj RCAC
Officer i/c Records
No. 2 C G R U

LIST OF WITNESSES

PROSECUTION

L101573 Sjt Heavisides, J.D. No. 2 Canadian General Reinforcement Unit

DEFENCE

Nil

LIST OF EXHIBITS

"A" Certified True Extract from "Y" List No. 1 CRD Part II Orders No. 99, dated 9 Jun 45 concerning the absence of D19612 Tpr Fairbanks G.E.

"B" Certified True Extract from No. 1 CGRU Part II Orders No. 207 dated 31 Aug 45 concerning the apprehension of B19612 Tpr Fairbanks G.E.

STATEMENT OF THE ACCUSED IN ACCORDANCE WITH RP 14(b)

I, B19612 Tpr Fairbanks G. E., of No. 2 Canadian General Reinforcement Unit, consent to have an Officer appointed by the Convening Officer to represent me at my trial by Court Martial.

G. E. Fairbanks
(B19612 Tpr Fairbanks G E)

15 Sep 45

Received from Lieut C E. Ennis, RCA, Officer detailed to take the Summary of Evidence, one (1) copy of the Summary of Evidence and one (1) copy of the Charge Sheet, in the case of B19612 Tpr Fairbanks G.E.)

G.E. Fairbanks

(B19612 Tpr Fairbanks G.E.)

H.Q.C. 55-F-887 CONFIDENTIAL

DEPARTMENT OF NATIONAL DEFENCE OTTAWA, CANADA

SUBJECT

FIELD GENERAL COURT-MARTIAL

FAIRBAIRN, HOWARD AROL FREDER

K-988 RE

CENTRAL REGISTRY	DATE	R.A. OR B.F.	INITIALS	REFERRED TO	FOR	INITIALS	DATE
				(If purpose for which referred cannot be expressed on one line,	and		
				enter here "With Minute")			2-12-46

CONFIDENTIAL
H.Q.C. 55-F-887

OVERSEAS COMBINED

NOTICE

1. Files should be retained no longer than absolutely necessary. If a file is frequently needed at short intervals, it is better to R.E. it for two or three days than keep it out of Central Registry indefinitely. This ensures it being completed and kept in order, and also gives other offices an opportunity to see same.
2. Central Registry should be notified whenever a file is passed direct to another branch.
3. All enquiries in connection with a file should quote the number.

PASS THIS FILE IN ENVELOPE

SCHEDULE.

PART I. PLEA(S), FINDING(S) AND SENTENCE.

Accused: K-988 Rfn Howard Arol Frederic FAIRBAIRN QOR of C att 1 Cdn Disciplinary Centre

Charge. (Insert "alternative" where applicable.)	Plea. (See Instrs p 2.)	Finding. (See note below.)	(Space for use as required for further charges, accused charged jointly, special findings, etc.)
1st	GUILTY OF AWL FROM 0800 HRS 15 MAR 45 TO 1130 HRS 6 APR 45	GUILTY OF AWL AS PLEADED UNDER RP 44 H.	
~~2nd 1ST~~			
3rd			
4th			
5th			
6th			

(Note: As to findings for lesser offences see AA 56, RP 44; findings on alternative charges see MML p 483 fn 4 para 2, RP 44; special findings see RP 44 and MML p 753, and in lieu of kit see RP 44 fn 6.)

~~At present under sentence for~~ ~~NIL~~ beginning on (date) ~~NIL~~ (1)

(1. Insert sentence being served, or delete, if not applicable. See RP 46(A). Information should be found on MF B355 or AF B296.)

Time in confinement awaiting present trial—a total of 34 days, of which 0 days were spent in hospital.(1)

(1. See RP 46(A) fn 2. Information should be found on MF B355 or AF B296 admitted in evidence under E2.)

Sentence Awarded by the Court:

To undergo detention for six months.

(Sgd) ..... Judge-Advocate, if any. 10 May 45 Date awarded. (Sgd) Gordon N Jerman Lt-Col President. (RP 45, 58.) Major.

(See back of Convening Order as to assembly and disposal of record after trial.)

PART II. MINUTE WHERE CONFIRMATION RESERVED. (AA 54(5), RP 120(F), MML p 760.)

Date ..... (Sgd) ..... Commanding .....

PART III. DECISION OF CONFIRMING OFFR ON FINDING(S) AND SENTENCE.

(For duties and powers see AA 54, 57, RP 37(D) fn 6,46(A), 51-56, 120, MML pp 759-761, KR Can 567-577. Acquittals require no confirmation and cannot be revised: AA 54(3). Sending back finding or sentence for revision by Court: AA 54(2), RP 120(G). If not confirmed, accused may be tried again: AA 157, MML p 64. Minute of confirmation or non-confirmation may be altered before promulgation: RP 53, MML p 65. Quashing after promulgation: KR Can 573. Duties and powers of reviewing offrs: AA 57, 57A, RP 53A, 54. The Confirming Offr must sign here personally. AA 172 fn 1.)

My decision on the finding(s) and sentence set forth in Part I is:

Confirmed

~~I direct that the accused be not committed to prison or detention barracks until further orders.~~ (1) GH

(1. AA 57A. Delete if not used.)

(Sgd) J H Whragge Brig

Date 14 May 45 Commanding 2 Can Base Rft Gp ~~Lt-Colonel~~ Brigadier, Confirming Officer.

PART IV. PROMULGATED AND EXTRACTS TAKEN. (RP 53, KR Can 576, 577.)

Accused. Date. Signature of Offr.

K988 Rfn Howard Arol Frederic FAIRBAIRN 19MAY45 ..... Lt-Col Comdg 1 Can Disciplinary Centre

ALL DELETIONS AND ALTERATIONS WILL BE INITIALLED.

Cpl 278 19 May 45

RECORDED AT CMHQ IN AD 105. SK-61

CFA96 (In lieu of APA31) 40/P & S/1098 (49301) 4/38B

FIELD GENERAL COURT-MARTIAL

Convened by Order of Brigadier J G Sprague DSO MBE Comd 2 CBRD dated 9 May 45

RECEIVED 4 JUN 1945 JAG BRANCH C.M.H.Q.

PROCEEDINGS REVIEWED 1 Can Sec 1 Tech. HQ J.A.G. 1321 Army Gp

PROCEEDINGS REVIEWED hpb hp Taylor Lt & June 45. REVIEWING OFFICER, JAG BRANCH C.M.H.Q.

ACCUSED.

(As to the trial of two or more charged jointly see RP 16, 71, 109. As to reasons for showing (a) permanent or confirmed rank and (b) appmt, A/rank or A/appmt, if any, see AA 182, 183, fns, KR Can 308, 328, 330.)

(a) Prmnt R.	(b) Appmt, A/R or A/Appmt.	Full Christian Names.	Surname.	Unit.
Rfn		Howard Arol Frederic	FAIRBAIRN	QOR of C att 1 Cdn Disciplinary Centre

PROCEEDINGS OF TRIAL.

Held at (country) BELGIUM on (date(s)) 10 May 45

RECORD FORM A—OPENING PROCEEDINGS AND ARRAIGNMENT. 31/122.

A1. The President, Members, ~~waiting Member, JA, if any, and~~ Offrs ~~under instr, if any~~, assemble, and the Court is closed.

(PRINTED MATTER, NOT IN ITALICS FOR GUIDANCE, WILL BE DELETED, IF NOT USED OR APPLICABLE, AND INITIALLED BY PRES OR JA. The Schedule referred to throughout is on p 4. Citations do NOT include all relevant fmn ROs. For guidance on procedure when a variation in this form arises, see form for GCM in MML pp 741 to 759. A brief record of such variation will be made and given a number having reference to appropriate or preceding para number herein. See back of Convening Order, CF A95, for oaths and instrs on how to record addresses, evidence, etc, which instrs are hereafter called "Notes". As to general provisions for conducting the trial see AA 53, RP 56, 63-70, 73, 74, 94, 103, 119, 132.)

A2. The President initials and lays before the Court the Convening Order and Charge Sheet(s) ~~is~~ attached thereto.(1) The Court is satisfied that it is properly convened and constituted(2), accused is (~~not~~) amenable to military law, and each charge discloses an offence.(3)

(1. As to use of Summary of Evidence see RP 17 fn 6. 2. AA 49, 50, RP 105-107. 3. RP 11-13, 23, 24.)

A3. The Court is opened. The accused is (~~not~~) brought before the Court. At 1545 hours trial commences.

A4. The Prosecutor produces a Medical Certificate that accused is (~~not~~) fit to undergo trial by court-martial.(1) ~~The Prosecutor informs the Court that accused elected to be tried by court-martial instead of being dealt with~~ summarily by the CO.(2)

(1. KR Can 557. 2. AA 46(B), RP 60 fn 1. For effect see KR Can 563(c). Delete, if not applicable.)

A5. President to accused: Do you object to ~~NIL~~ as interpreter? Ans .....

The Interpreter is sworn.(1) Do you object to ..... as shorthand writer? Ans .....

~~The shorthand writer is sworn.(1)~~

(1. RP 72. Delete, if none employed.)

A6. The Convening Order and names of the President and Members of the Court are read to the accused.(1) President to accused: Do you object to be tried by me as President or by any of the Members of the Court?

Ans NO SIR (2)

(1. RP 110. 2. If no objection, waiting member retires. RP 68(B). If objection, see procedure AA 51, RP 25, 71, 18, MML p 742.)

A7. The President, Members, ~~JA, if any, and Offrs under instr, if any~~, are sworn.(1) The following are the ranks, names and units of the offrs comprising the Court, etc:

President	Major	J.N. JERMYN	Cdn Courts-Martial Centre
Member	Major	A.E. Lafray	Cdn Courts-Martial Centre
Member	Capt	R.F.L. Miles	Cdn Courts-Martial Centre
Judge-Advocate			
Prosecutor	Lt.	V Pope	Cdn Courts-Martial Centre
Defending Offr	Capt	P. Mate	Cdn Courts-Martial Centre

Questions by President: Is the Prosecutor a lawyer? Ans NO Is the Defending Offr a lawyer? Ans NO (2)

(1. RP 26, 27, 109, 111. List of offrs under instr will be returned separately with proceedings for information of Conv Offr.)
(2. If Pros a lawyer and Def Offr not, accused is entitled to an adjournment when RP 89 (B) and fn 2 were not followed. See D1 p 3.)

A8. The accused K-988 Rfn FAIRBAIRN H A F before arraignment make(s) (no) ~~NIL~~ plea (1)

(1. If a special plea is made for separate trial on one or more charges (RP 62(E), 108), or as to the jurisdiction of the Court (RP 34, 35(A), 113), or in bar of trial (RP 36), or as to accused's mental fitness to stand trial (AA 130, RP 57), or by one of several accused charged jointly to be tried sepcurately (RP 16, 71), such plea, the addresses made in support or against, the evidence, if any, and finding are recorded per Notes. For forms of record see references in fns to RsP cited. Insert in A8 rank and name of the accused making the plea.)

A9. The accused is (~~not~~) arraigned (~~separately~~) on all charges in the charge sheet.(1) The accused does (~~not~~) not object to any charge.(2) There is no amendment to be made to the Charge Sheet.(3) The President records the pleas in Part I of the Schedule.

(1. RP 31, 112. See page 1 of Instrs p 2. When more than one Charge Sheet see RP 62; when several accused to be tried separately see RP 71(C), and use separate copies of CF A96 to record proceedings. 2. RP 32, RP 33. If otherwise, delete and make appropriate record per Notes.)

A10. The Court (~~is closed~~) considers the Instrs on Procedure after Arraignment at top of p 2. The proceedings are continued on Record Form B & E

PRESIDENT OR JA WILL INITIAL ALL DELETIONS AND ALTERATIONS.

2 CBRG Vol 7 P 36.

INSTRUCTIONS ON PROCEDURE AFTER ARRAIGNMENT.

1. *The accused may not plead or be found Guilty on more than one of two or more charges laid in the alternative.* (*RP* 37(*A*).) *As to withdrawal of alternative charges by Prosecutor see RP* 35(*C*). *No other charge can be withdrawn for any reason without authy from Convening Offr. If Convening Offr concurs, Court may accept plea of Guilty to lesser, etc, offence.* (*RP* 44(*H*).) *Accused may change a plea of Not Guilty to Guilty during trial.* (*RP* 38.) *As to refusing to plead or not pleading intelligibly see RP* 35(*A*). *As to plea when sentence may be death see RP* 35(*D*).

2. *The proceedings on each charge sheet* (*RP* 62) *after arraignment will be conducted as follows in the respective circumstances stated :*

I. If pleas to all charges are GUILTY, use Record Form B below.

II. If pleas to all charges are NOT GUILTY, use Record Form D on p 3.

III. If pleas to some charges are GUILTY and to other charges are NOT GUILTY and,

(a) Such mixed pleas occur when there are no alternative charges in the Charge Sheet, use Record Form C below. (*RP* 37(*A*).)

(b) Such mixed pleas occur in a set of two or more charges laid in the alternative, see RP 37 (*A*) *and fn* 2 *as to discretion of Court,* (*i*) *to try the accused on all such alternative charges as if he had pleaded Not Guilty thereto, or,* (*ii*) *to record the pleas as the findings of Court. After deciding between* (*i*) *and* (*ii*), *Court will proceed under foregoing instrs as may be appropriate to result of its decision. See MML p* 744 *Instrs* (2).

3. *As to responsibility of President to accused see RP* 59, 60(*C*) ; *powers and duties of JA see RP* 103 ; *duty of Prosecutor see RP* 60(*A*) (*B*) ; *duty and privileges of accused and Defending Offr see RP* 60(*C*), 87(*C*), 91, 92 ; *swearing and withdrawal of witnesses from Court see RP* 81, 82 ; *questioning of accused see RP* 80, 87(*C*), 92(*B*), *and of witnesses see RP* 83-85 ; *calling or re-calling of witnesses by Court, etc, see RP* 75-79, 86, 116 ; *use of Summary of Evidence at Trial see RP* 17(*E*) *fn* 6 ; *and responsibility of JA or Pres to record proceedings see RP* 94, 96.

RECORD FORM B—PROCEEDINGS ON PLEAS OF GUILTY TO ALL CHARGES.

B1. The President ~~or JA~~ Kirby, complies with RP 35(B) by explaining to the accused the nature and meaning of the charge(s), and that on his plea of Guilty there will be no regular trial but merely a consideration of the sentence to be awarded after he has been given an opportunity to make a statement in reference to the charge(s) call witnesses as to character and make an address in mitigation of punishment.(2)
(*1. RP* 35 *fn* 3. *2. MML p* 54 *para* 47.)

B2. President to accused : The Court will now receive any statement you desire to make in reference to the charge(s).(1) If it appears from your statement that there are circumstances which indicate that you do not understand the effect of the plea of Guilty(2), or which show provocation or extenuation in respect of which in your interest the witnesses for the Prosecution should be examined(3), we shall advise you to change your plea to Not Guilty. In making a statement you will not be sworn or subject to cross-examination ; and anything you say will not be used in evidence against you after you change your plea. If, however, it appears to the Court that your statement affects only the amount of punishment to which you are liable, you will not be advised to change your plea and you will be given an opportunity later to prove your statement by sworn testimony, if you so desire.(4)

President to accused : Do you wish to make a statement ? Ans. No Sir.(5)
(*1. RP* 37(*B*). *2. RP* 37(*D*) *fn* 6. *3. RP* 35(*B*) *fn* 5 *para* 3, *MML p* 54 *para* 47. *4. See para E3 of Record Form E.*
5. Statement, if any, recorded per Notes.)

B3. ~~The Court considers the accused's statement.(1) The Court decides (not) to advise accused to change his (their) plea(s) of Guilty to Not Guilty on ..... charge(s). The accused is (are) so informed, and he (they) change(s) his (their) plea(s) on ..... charge(s). Part I of the Schedule is amended accordingly.~~ Ed.
(*1. Court may be closed to consider the statement. Delete whole or part not used.*)

B4. On the charge(s) to which the plea(s) of Guilty is (are) not changed the President records finding(s) of Guilty in Part I of the Schedule.(1)
(*1. RP* 35(*B*). *If any plea(s) is (are) changed, use Record Form C or D as appropriate.*)

B5. The Summary of Evidence is marked Ex 'A', initialled and read aloud by the President.(1)
(*1. If there is no Summary, or if it is inadequate, comply with RP* 37(*B*). *If there is any evidence inconsistent with any plea standing as Guilty, Court will advise accused to change such plea and, if changed to Not Guilty, try such charge(s) by use of paras D1 to D8 inclusive of Record Form D on p* 3. *RP* 37(*D*).)

B6. The accused having been found Guilty on one or more of the charges, the proceedings are concluded by using Record Form E on p 3.

RECORD FORM C—PROCEEDINGS ON MIXED PLEAS OF GUILTY AND NOT GUILTY.

C1. As to the charges on which accused pleaded NOT GUILTY the trial is continued by using paras D1 to D8 inclusive of Record Form D on p 3 before proceeding with C 2.(1)
(*1. RP* 37(*A*) (*E*).)

C2. The charges on which accused pleaded GUILTY are read to him (them) again, and the trial is continued by using paras B1 to B5 of Record Form B above.(1)
(*1. Under B5 such parts only of the Summary of Evidence are read as relate to the charges dealt with under C2. If any plea is changed to Not Guilty, trial thereon proceeds by complying with paras D1 to D8 inclusive in Record Form D on p 3 and making an appropriate record thereof on a separate sheet.*)

C3. The accused having been found Guilty on one or more of the charges, the proceedings are concluded by using Record Form E on p 3.

PRESIDENT OR JA WILL INITIAL ALL DELETIONS AND ALTERATIONS.

RECORD FORM D—PROCEEDINGS ON PLEAS OF NOT GUILTY TO ALL CHARGES.

D1. President to accused : Do you wish to apply for an adjournment on the ground that any of the rules relating to procedure before trial have not been complied with, and that you have been prejudiced thereby, or on the ground that you have not had sufficient opportunity to prepare your defence ? Ans. .....(1)
(*1. If "yes", see RP* 39(*A*) *for procedure. Statement or evidence, if any, is recorded per Notes.*)

D2. The Prosecutor makes (an) (no) opening address.(1)
(*1. RP* 39(*B*), 60(*A*) (*B*), 90, 92(*C*) (*D*). *Record address per Notes, subject to RP* 95(*C*).)

D3. The evidence for the Prosecution is taken.(1)
(*1. RP* 39(*C*), *114, KR Can* 555. *Record evidence per Notes. As to Prosecutor giving evidence himself see RP* 39(*D*) (*E*).)

D4. The Prosecution is closed.(1) The Defending Offr submits that the evidence for the Prosecution does not establish a prima facie case against the accused on the ..... charge(s).(2) The Court is closed, and considers the submission.(3) The Court is re-opened, and the President announces that the submission is disallowed on the ..... charge(s), and allowed on the ..... charge(s), and that, accordingly, the trial will proceed on the former, but the accused is (are) found Not Guilty on the latter charge(s).(4)
(*1. Delete remainder of this para, if submission not made. 2. Arguments on submission, answer and reply are recorded per Notes. 3. RP* 40 *fn* 1. *See MML p* 72 *paras* 12-14 *and p* 81 *para* 42. *4. Delete part not used. If accused acquitted on all charges use second alternative in para D8.*)
NB : If trial proceeds, accused must be allowed great latitude in making his defence, and the Court should not stop his defence solely on ground of irrelevance. (*RP* 60(*C*), 114, 115.)

D5. President to accused : You will now proceed with your defence.(1) You may, if you wish, give evidence yourself on oath as to the facts or your character or both, in which case you will be subject to cross-examination.(2) You may, however, make a statement without being sworn, and you will not be subject to cross-examination.(3) But a statement which could have been made on oath will not carry with the Court the same weight as sworn testimony.(4) You may call witnesses in your defence and as to character, whether you give evidence or make a statement or do neither.

President to accused : Do you wish to give evidence yourself as a witness, make a statement, or do neither ? Ans. ..... Do you intend to call witnesses on your behalf ? Ans. ..... Are they witnesses as to character only ? Ans. .....
(*1. RP* 115. *2. RP* 40(*A*), *see* 80(*D*). *3. RP* 40 *fn* 10. *4. RP* 40 *fns* 2, 9.)

D6. Consequent on the answers recorded in para D5 the appropriate procedure for the defence is followed.(1)
(*1. RP* 114, 115, 116. *For procedure see Notes on back of Convening Order, CF A95. Evidence for accused as to his character should, if in his interest, be given before the finding. See RP* 46(*A*) *fn* 1, 86(*C*). *Note the further opportunity in para E1 of Record Form E. Record per Notes addresses, statement, evidence and any summing up by the JA under RP* 42, 103(*e*).)

D7. The Court is closed to consider the finding(s).(1) The finding(s) of the Court is (are) recorded in Part I of the Schedule.(2) The Court is re-opened.
(*1. RP* 43, 117(*A*). *See Notes in Part I of Schedule. 2. RP* 44(*A*).)

D8. The President announces the finding(s), if any, of Not Guilty, and states to the accused that the finding(s) of the Court on the ..... charge(s), being subject to confirmation, will be promulgated later.(1)
Or, The President announces that the accused is found Not Guilty on all charges and is to be released forthwith, and that the proceedings are accordingly terminated. Part I of the Schedule is dated and signed.(2)
(*1. AA* 54(3) (*b*), *RP* 45, 120(*A*). *2. AA* 54(3), *RP* 45, 117. *This alternative announcement is not applicable when there are pleas of Guilty outstanding and dealt with under Record Form B or C.*)

D9. The accused having been found Guilty on one or more of the charges, the proceedings are concluded by using Record Form E below.

RECORD FORM E—PROCEEDINGS ON CONVICTION BEFORE SENTENCE.

E1. President to accused : Do you wish to give evidence yourself or to call any witnesses as to your character ?(1)
Ans. ~~No Sir~~ Yes Sir.
(*1. If evidence has already been given by accused or his witnesses as to his character, delete this para. RP* 37(*C*) *fn* 4, 46 *fn* 1. *Accused and witnesses are sworn. Evidence recorded per Notes.*)

E2. The Prosecutor produces Statement(s) as to Character and Particulars of Service(1), and certified true copy (~~copies~~) of Conduct Sheet(s)(2), purporting to refer to the accused, which he submits to the Defending Offr for examination, and then to the Court for admission in evidence. The Court is satisfied that these documents refer to the accused, because (i) they purport to be signed in the manner required by AA 163(l) (g) (h), and (ii) they purport to refer to (a) soldier(s) having the same number, rank, name and corps as the accused. Admitted in evidence and marked Ex. B and Ex. C respectively.(3)
(*1. MFB* 355 *or AFB* 296. *2. MFM* 6. *3. RP* 46, *KR Can* 558. *If above documents not produced, see RP* 46 *fn* 1 *para* 1.)

E3. President to accused : Do you wish to address the Court on the Statement(s) and Conduct Sheet(s) and in mitigation of punishment ?(2) Ans. Yes sir by my defending officer.(3)
(*1. RP* 37(*C*), 46(*D*). *2. Address, if any, recorded per Notes. Court should permit accused or his witnesses to prove on oath anything here or previously stated which would affect the amount of punishment. RP* 37(*F*) *fn* 7.)

E4. The President states that the Court is closed to consider the sentence, and that the sentence to be awarded by the Court, being subject to confirmation, will not be announced, but will be promulgated later, and the proceedings in open court are accordingly terminated.(1)
(*1. AA* 54(6), *RP* 120(*A*).)

E5. The Court considers the sentence.(1) The President records the sentence in Part I of the Schedule, which is dated and signed by him and the JA, if any.(2)
(*1. When several accused tried separately see RP* 71 (*D*). *One sentence only, comprised of the punishment or punishments laid down in AA* 41, 44 *and its proviso, is to be awarded to cover all charges in all charge sheets on which accused found guilty. RP* 48. *As to sentences see AA* 44, 138, 182, *RP* 46-50, 69, 118, 119(*A*), *KR Can* 308, 330, 563-566, *Overseas RO* 309, 2323, *MML p* 60, 757-759. *As to sentences assigned for civil offences by the law of England see AA* 41(5), *MML p* 130. *When accused already under sentence of imprisonment or detention see AA* 44(18), 68(1), *KR Can* 564. *2. RP* 50. *As to release from arrest by Confirming Offr see KR Can* 567. *As to assembly and disposal of record after trial see INSTRS on back of Convening Order.*)

PRESIDENT OR JA WILL INITIAL ALL DELETIONS AND ALTERATIONS.

MEDICAL OFFICERS CERTIFICATE MFB 246

(KR(Can) Para 55)
(CMHQ CL 173)

I certify that I have this day examined RFMN (Rank) FAIRBAIRN H A (Name) K 988 (No.) and in my opinion he is fit ~~unfit~~ to undergo trial by Court-Martial.

Station 1 Cdn Disciplinary Centre

Date 10 May 1945 Unit 1 Cdn Disciplinary Centre

Capt (Medical Officer) (Sgd)

35.

FIELD GENERAL COURT-MARTIAL

(Whether the accused to be tried is under his comd or not, a FGCM may on application to him be convened by any offr of Cdn Army Overseas, or of any other force if authorized in law, in immediate comd of troops on active service, subject to RP 105(C) and restrictions imposed by appropriate authy. AA 49, 50, RP 104-107, 114. As to the duties and privileges of the Convening Offr in dealing with the application see MML Chap V paras 20 and 23, RP 87(B).

There should be a separate Convening Order for each person to be tried separately by the same Court. RP 71(C), 109. As to separate charge sheets see RP 62, and as to separate trial on charges in the same charge sheet see RP 108. As to two or more accused charged jointly see RP 16, 109.

As to reasons for showing (a) permanent or confirmed rank, and (b) appmt, A/rank or A/appmt, if any, see AA 182, 183, fns, KR Can 308, 328, 330.)

ACCUSED.

Number.	(a) Prmnt R.	(b) Appmt, A/R or A/Appmt.	Full Christian Names.	Surname.	Unit.
K-968	Rfn		Howard Arol Frederic	FAIRBAIRN	QOR of C att 1 Cdn Disciplinary Centre

CONVENING ORDER.

1. Whereas complaint has been made to me, the undersigned, that the person(s) named above as the accused, being subject to military law, has ~~(have)~~ committed the offence(s) set forth in the Charge Sheet(s) attached and on *(date)* 9 May 45 endorsed by me, ~~(or by an offr of my staff for me)~~, " To be tried by Field General Court-Martial ".

2. And whereas I am of opinion that it is not practicable that such offence(s) should be tried by an ordinary General Court-Martial ; ~~(and that it is not practicable to delay the trial for reference to a superior qualified offr.)~~

(Delete part in brackets when not required for compliance with RP 105(C).)

3. I hereby convene a Field General Court-Martial to try the said person(s), and to consist of the Offrs appointed or detailed hereunder.

~~4. I am unable to appoint (a) three Offrs to form the Court, (b) a Fd Offr as President, for the reasons I have attached hereto.~~

(AA 49, RP 106(B), 107(A). Delete the whole or part, if not applicable.)

~~5. I also appoint as Judge-Advocate thereat the Offr mentioned hereunder.~~

(RP 106(E). Delete, if none appointed.)

PRESIDENT.

(Rank.)	(Must be named. RP 106.)	(Unit.)
Major	G H JERMYN	Cdn Courts-Martial Centre

MEMBERS.

(Rank.)	(Named or detailed. RP 106.)	(Unit.)
Major	A E LEFROY	Seaforth Highrs Cdn Courts-Martial Centre
Capt	R G L MILES	Cdn Courts-Martial Centre

WAITING MEMBER.

(Rank.)	(Named or detailed, if any. RP 106.)	(Unit.)

JUDGE-ADVOCATE.

(Rank.)	(Must be named, if any. RP 106.)	(Unit.)

On Active Service in the Fd

in BELGIUM *(Country.)*

(Signed personally. RP 106 (n. 2.)) Brigadier *(Rank.)*

(J C Spragge)

Date 9 May 45

Commanding 2 Cdn Base Rft Gp

Convening Officer.

CONVENING OFFR WILL INITIAL ALL DELETIONS AND ALTERATIONS

(See overleaf for oaths and notes for use on trial.)

4

CHARGE SHEET

The accused, K-988 Rfn Howard Arol Frederic FAIRBAIRN, The Queen's Own Rifles of Canada; attached to 1 Cdn Disciplinary Centre, a soldier of the Canadian Army Overseas, is charged with:-

FIRST CHARGE
Sec 15 (1)
Army Act

WHEN ON ACTIVE SERVICE ABSENTING HIMSELF WITHOUT LEAVE

in that he

in the Field, absented himself without leave from 0800 hrs 15 Mar 45 until apprehended at 2000 hrs 11 Apr 45.

(Total absence: 27 days 12 hrs)

Remanded for Summary of Evidence

In the Field
3 May 45

(J N Medhurst) Lt col
Commanding
1 Cdn Disciplinary Centre

Remanded for Field General Court-Martial

In the Field
3 May 45

(J N Medhurst) Lt col
Commanding
1 Cdn Disciplinary Centre

To be tried by Field General Court-Martial

In the Field
9 May 45

(J [illegible]) Brigadier,
Commander
2 Cdn Base Rft Gp

Schedule Part I

The accused will not plead guilty of A.W.L. as charged but will plead guilty to A.W.L. from 0800 hrs 15 Mar 45 until he surrendered himself at 1130 hrs 5 Apr 45 to a Captain of the U.S. Army Intelligence Corps at Augsburg Germany.

The Court is satisfied to accept the plea and the Prosecuting Officer concurs on behalf of the Convening Officer under R.P. 44H.

E-1 Evidence of accused

K. 988 Afn Fairhairn, H.A.F. QOR of C att 1 Cdn Div Recruit sworn states,

I enlisted in June 1943 and came overseas in Apr 44. I joined the QOR on 5 June 44. Until I was evacuated I was a rifleman. I returned and was made a sniper in Jan 45. I was wounded in action on 11 June 44 I was evacuated to Eng land for about 2½ months then on my return to the unit I was again a rifleman until Dec 14 about I was wounded a second time but not seriously. My unit was in rest when I went A.W.L. When we came back to rest we had a new pl. sgt and under with whom I didn't get along I was late on parade one morning and was told I was going to be sent back to a rifle coy as punishment. There were few people left in the coy that I knew and I wanted to continue with the scout pl. as a sniper. I had no leave with the unit. I went to Paris ~~with~~ but I was afraid of being caught by U.S. Provosts so I went south out of Paris. I went from village to village to avoid suspicion. Then when I realized I would be classed as a deserter I took the opportunity of surrendering myself to an American Captain on 5 Apr 45.

R.P. 93 (b) complied with.

E-3 Offending Officer in Mitigation

The accused is 21 years old. Up to 15 Mar he was in action nearly 7 months. Just prior to going A.W.L. he had been a sniper for 2½ months. He needed a rest. He saw a pal of his new sgt and when A.W.L. last finally surrendered

himself. Looking at his MPMG you see four charges all together
There were at C.I.R.U.
When Hamburn went there he was just out of hospital and they
put him at hard training instead of working up to it gradually.
Even then the absences are very short. I ask the court to
consider these points in considering its sentence.

F. Jones Maj
Pres.

EXHIBIT 'A'

Summary of Evidence in the case of K-988 Rfn FAIRBAIRN H A F, Q O R of C, attached to 1 Cdn Disciplinary Centre, a soldier of the Canadian Army Overseas.

Charge - Absence without leave

By direction of the CO the evidence is taken on oath.

The following documents are read over to the accused, marked as exhibits and are attached to the proceedings.

Exhibit "A" - Certified true copy of extract from Part 41 Order No. [illegible] dated 8 Apr 45

FIRST WITNESS Cpl PARKER P, SIS No. 41 Flight RAF Police

I certify that the attendance of this witness is, owing to the exigencies of the service, not readily procurable and a written statement of his evidence, signed by him, has been read over to the accused and is attached hereto as Exhibit "B".

M. Rousseau Capt
(Maurice Rousseau) Capt

I do not require the attendance of Cpl PARKER P for the purpose of cross-examination.

H.A. Fairbairn
(the accused

Q. Do you wish to make any statement or to give evidence on oath? You are not obliged to say anything or to give evidence unless you wish to do so but whatever you say or any evidence you give will be taken down in writing and may be given in evidence.

A. I have nothing to say.

The accused does not call any witness.

I certify that the foregoing Summary of Evidence consisting of one page was taken down by me in the presence of the accused and that RP 4 (C)(D)(E)(F) and (G) have been complied with.

M. Rousseau Capt
(Maurice Rousseau) Capt
Officer detailed to take Summary of Evidence

Dated in the Field
3 May 45

Exhibit A
M. Rousseau Capt

PART II ORDER EXTRACT FORM

99/20/..... OOR/1 (A.5c)

TO:

30 APR 19 45

EXTRACTS FROM: Unit THE QUEEN'S OWN RIFLES OF CANADA

Part II Order No. 22 dated 8 APR 45

ABSENT WITHOUT LEAVE

AWL from 0800 hrs 15 MAR 45 Still absent 0800 hrs 23 MAR 45
(8th day)
K988 Rfn FAIRBAIRN H A F

Certified to be a true extract from the regimental books and documents in my custody.

Officer IC Records "C"
Cdn. Sec. 2 Ech. HQ. 21 A Gp

The following documents are { attached. / required. } Please acknowledge receipt on attached duplicate. Please forward same.

Originating Clerk's Initials JRK

(J R Fenelon) Captain for
Officer in Charge
Canadian Section, GHQ, 2nd Echelon 21 A Gp

ECH—6
40/P & S/1276 (4032)

Exhibit B
M. Rousseau Capt

STATEMENT OF EVIDENCE IN THE CASE OF

No. K 988. Rifleman FAIRBAIRN, H.A.F.

Sir,

On 11.4.45. at 2000 hours I saw the abovenamed soldier at the Quartier Cafarelli, Toulouse, where he was being held in close arrest. I obtained his particulars and searched him.

On 12.4.45. I saw F/Ot Hull, Adjutant, No. 138 Staging Post, R.A.F., Blagnac, who handed to me an Arrest Report forwarded ~~to~~ to the Unit by the French Civil Police. (Original and translated copy attached marked 'A' and 'B').

On 13.4.45. Fairbairn was transferred to the R.A.F. Police Holding Centre, Marseille, under escort.

On 16.4.45. I cautioned and interviewed Fairbairn. He declined to make a statement. I then cautioned and charged him with the offence as set out on attached Form 252. He made no reply in answer to the charge.

I. P. Parker Cpl.

In the Field,
16.4.45.

Special Investigation Branch.
No. 4I Flight, R.A.F. Police.

LIST OF WITNESSES

PROSECUTION — Cpl PARKER P, SIS No 41 Flight RAF Police

DEFENCE — N/A

LIST OF EXHIBITS

Certified true copy of Extract from Pt 11 Order No 22 dated 8 Apr 45 — "A"

Written statement of evidence of Cpl PARKER P SIS No 41 Flight RAF Police — "B"

I, K-988 Rfn FAIRBAIRN HAF, acknowledge having received one copy of the Summary of Evidence and one copy of the Charge Sheet, free of charge on 3 May 45.

K-988 Rfn FAIRBAIRN HAF

EXHIBIT B

ARMY FORM B.296 (WAR).

Statement as to Character and Particulars of Service of Accused.

(For Use at Trials by Field General Courts-Martial only).

Number.	Rank.	Name.	Regiment (or as the case may be).
K-988	Pte	FAIRBAIRN HAF	QOR OF C

NOTE.—The Field Conduct Sheet is to be produced in Court with this statement but is not to be annexed to the proceedings. The numbers herein stated should correspond with the number of ENTRIES in the Field Conduct Sheet, prominence being given to the most serious offence in each entry. If the charge is for drunkenness or absence without leave, the entries for drunkenness or absence, as the case may be, should be stated separately. Any recognized special acts of gallantry or distinguished conduct recorded on the Field Conduct Sheet should also be inserted here.

1. The following is a fair and true summary of the entries in the Field Conduct Sheet of the accused, exclusive of convictions by a court martial or a civil court :—

For 15 (1) AWL 6 6 times.

For _____ _____ times.

For _____ _____ times.

For _____ _____ times.

Date of first entry in Field Conduct Sheet 22 Sep 44

Date of last entry in Field Conduct Sheet 1 Feb 45

2. Previous convictions of the accused by a court martial or a civil court are set out in the Schedule overleaf.

*Strike out if not applicable.

*3. The accused at the present time is under sentence for NIL beginning on the N/A day of N/A

4. The accused has been awaiting trial on the present charges for NO days in civil custody; and for 34 days in military custody, *i.e.*, NIL days in open arrest, 34 days in close arrest; of which NIL days were spent in hospital.

5. The present age of the accused is 21 years 10 months old

6. The date of his attestation ~~calling up for military service~~ is 20 Aug 43

7. The service which the accused is allowed to reckon is _____

†State the military decorations (if any) held by accused.

8. The accused is in possession of† _____

9. (*If the accused is a warrant officer or N.C.O.*). The accused has served continuously, without reduction, to the present date—

	Date of Promotion.
In the substantive rank of /////	_____
In the war substantive rank of /////	_____
In the acting rank of /////	_____

INSTRUCTION.—*If any matter in any of the above paragraphs cannot be stated from the regimental books the paragraph must be struck through.*

(27833) Wt.24930/3404 24,000 7/44 A.& E.W.Ltd. Gp.698 Forms/B.296(War)/2

SCHEDULE OF CONVICTIONS BY A COURT-MARTIAL OR CIVIL COURT.

Description of Court by which tried.	Date and Place of Trial.	Charges upon which convicted.	Sentence of the Court.	Punishment remitted or sentence suspended.
		No record of conviction by Court-Martial on MFM 6		

I HEREBY CERTIFY that the foregoing particulars, which have been extracted from the regimental books in my custody, are correct to the best of my knowledge and belief.

Signed this 10 day of May 1943

Major

EXHIBIT C

No. B988 Name FAIRBAIRN HAF Sqn, Battery, or Company — Corps CIC — Date of enlistment 20 Aug 43 — GC Badges — Service or Proficiency Pay — 3/17 MFM 6 (AFB 122) 40/P&S/126 (5413)

Date of last entry in Company Conduct Sheet N/A — No. and date of last drunk N/A — Period not reckoning towards freedom from extra fine N/A — Sheet No I — Signature OC Company, etc — Character

Place	Date of offence	Rank	Cases of drunkenness	OFFENCE	Names of Witnesses	Punishment awarded	Date of award or of order dispensing with trial	By whom awarded	Remarks
Field		Pte		15(1) AWL 3 days 16 hrs 55 Min		15 days forf Py	22 Sep44	DO 223/44	CIRU
Field		Pte		15(1) AWL 7 days 2 hrs		12 Days FP	19 Oct44	DP247/44	3 CIRU
Field		Pte		15(1) AWL 2 days 4 hrs 15 Mins		15 days FP	24 Oct44	DO 250/44	3 CIRU
Field		Pte		15(1) AWL 2 days 5 hrs 20 Mins		10 days FP	28 Oct44	DO 254/44	3 CIRU
Field		Pte		15(1) AWL 3 hrs		5 days pay	9 Dec44	DO 62/44	QOR
				15(1) AWL 13 hrs 30 mins		28 daysforfPay	1Feb45	DO/10/45	QOR

Duplicate erested from MFM 4 27 Apr 45 Record of Conduct in Canada prior to TOS Cdn Army Overseas
5 Apr 44 not available "RSC WILLIAMS" Lieut Officer ic Records X Cdn Sec 2 Ech HQ 21 A Gp

Certified copy or MFM 6 in my possession

[illegible] Offr.
1 Cdn Disciplinary Centre

(PTO)

H.Q.C. 55-F-888

CONFIDENTIAL

[redacted]
H.Q. 301-1-27

DEPARTMENT OF NATIONAL DEFENCE—OTTAWA, CANADA

SUBJECT

FIELD GENERAL COURT-MARTIAL

FAGG, DENNIS H-102009 RFN.

CONFIDENTIAL
H.Q.C. 55-F-888

CENTRAL REGISTRY	DATE	P.A. OR S.F.	INITIALS	REFERRED TO	FOR	INITIALS	DATE
				(If purpose for which referred cannot be expressed on one line, enter here "With Minute")			
							2-12-46

OVERSEAS COMBINED

NOTICE

1. Files should be retained no longer than absolutely necessary. If a file is frequently needed at short intervals, it is better to B.F. it for two or three days than keep it out of Central Registry indefinitely. This ensures it being completed and kept in order, and also gives other officers an opportunity to see same.
2. Central Registry should be notified whenever a file is passed direct to another branch.
3. All subjects letters should bear the official file number.

PASS THIS FILE IN ENVELOPE

SCHEDULE.

PART I. PLEA(S), FINDING(S) AND SENTENCE.

Accused: H.102009 Rfn Fagg, D., 4 R Wpg Rif (CAOF)

Charge. (Insert "alternative" where applicable.)	Plea. (See Instrs p 2.)	Finding. (See note below.)	(Space for use as required for further charges, accused charged jointly, special findings, etc.)
1st AA 40	NOT GUILTY	NOT GUILTY	
2nd AA 40	NOT GUILTY	NOT GUILTY	
3rd AA 40	NOT GUILTY	NOT GUILTY	
4th			
5th			
6th			

(Note: As to findings for lesser offences see AA 56, RP 44; findings on alternative charges see MML p 483 fn 4 para 2, RP 44; special findings see RP 44 and MML p 753, and in loss of kit see RP 44 fn 6.)

R. At present under sentence for ..... beginning on (date) ..... (1) R

(1. Insert sentence being served, or delete, if not applicable. See RP 46(A). Information should be found on MF B355 or AF B296.)

Time in confinement awaiting present trial a total of ..... days, of which ..... days were spent in hospital.(1)

(1. See RP 46(A) fn 2. Information should be found on MF B355 or AF B296 admitted in evidence under EZ.)

Sentence Awarded by the Court:

(Sgd) J M Sutherland Capt. 12 Oct 45 (Sgd) A P W Watkinson Maj

Judge-Advocate, if any. Date awarded. President. (RP 45, 50.)

(See back of Convening Order as to assembly and disposal of record after trial.)

PART II. MINUTE WHERE CONFIRMATION RESERVED. (AA 54(5), RP 120(F), MML p 760.)

Date ..... (Sgd) ..... Commanding .....

PART III. DECISION OF CONFIRMING OFFR ON FINDING(S) AND SENTENCE.

(For duties and powers see AA 54, 57, RP 37(D) fn 6, 46(A), 51-56, 120, MML pp 759-761, KR Can 567-577. Acquittals require no confirmation and cannot be revised: AA 54(3). Sending back finding or sentence for revision by Court: AA 54(2), RP 120(G). If not confirmed, accused may be tried again: AA 157, MML p 64. Minute of confirmation or non-confirmation may be altered before promulgation: RP 53, MML p 65. Quashing after promulgation: KR Can 573. Duties and powers of reviewing offrs: AA 57, 57A, RP 53A, 54. The Confirming Offr must sign here personally. AA 172 fn 1.)

My decision on the finding(s) and sentence set forth in Part I is:

"ACQUITTAL NOTED"

I direct that the accused be not committed to prison or detention barracks until further orders.(1)

(1. AA 57A. Delete if not used.)

(Sgd) J M Meadhurst (J M Meadhurst) Lt Col

Date 18 Oct 45 A/ Commanding 2/7 Cdn Inf Bde (Rif) CAOF

Confirming Officer.

PART IV. PROMULGATED AND EXTRACTS TAKEN. (RP 53, KR Can 576, 577.)

Accused. Date. Signature of Offr.

ALL DELETIONS AND ALTERATIONS WILL BE INITIALLED.

RECEIVED 24 OCT 1945 BRANCH C.M.H.Q.

RECORDED AT CMHQ IN AB 150, C A O F - 1 - 34

CFA96 (In lieu of AF A83) 40/P & S/1068 (2834)

FIELD GENERAL COURT-MARTIAL

Convened by Order of Brigadier TG Gibson DSO Comd 2/7 Cdn Inf Bde (Rif) (CAOF) dated 10 Oct 45

ACCUSED.

(As to the trial of two or more charged jointly see RP 16, 71, 109. As to reasons for showing (a) permanent or confirmed rank, and (b) appmt, A/rank or A/appmt, if any, see AA 182, 183, fns, KR Can 308, 328, 330.)

Number.	(a) Prmnt R. (b) Appmt, A/R or A/Appmt.	Full Christian Names.	Surname.	Unit.
H.102009	Rfn	Dennis	FAGG,	4 R Wpg Rif (CAOF)

PROCEEDINGS REVIEWED
R Swanwick Capt
24 Oct 45
REVIEWING OFFICER, JAG BRANCH C.M.H.Q.

PROCEEDINGS OF TRIAL.

Held in the Fd in (country) GERMANY on (date(s)) 12 Oct 45

RECORD FORM A—OPENING PROCEEDINGS AND ARRAIGNMENT.

R. A1. The President, Members, ~~waiting Member,~~ JA, if any, ~~and Offrs under instr, if any~~, assemble, and the Court is closed.

(PRINTED MATTER, NOT IN ITALICS FOR GUIDANCE, WILL BE DELETED IF NOT USED OR APPLICABLE, AND INITIALLED BY PRES OR JA. The Schedule referred to throughout is on p 4. Citations do NOT include all relevant fmn ROs. For guidance on procedure when a variation in this form arises, see form for GCM in MML pp 741 to 759. A brief record of such variation will be made and given a number having reference to appropriate or preceding para number herein. See back of Convening Order, CF A95, for oaths and instrs on how to record addresses, evidence, etc, which instrs are hereafter called "Notes". As to general provisions for conducting the trial see AA 53, RP 56, 63-70, 73, 74, 94, 103, 119, 137.)

R. A2. The President initials and lays before the Court the Convening Order and Charge Sheet(s) attached thereto.(1) The Court is satisfied that it is properly convened and constituted(2), accused is ~~(are)~~ amenable to military law, and each charge discloses an offence.(3)

(1. As to use of Summary of Evidence see RP 17 fn 6. 2. AA 49, 50, RP 105-107. 3. RP 11-13, 23, 24.)

R. A3. The Court is opened. The accused is ~~(are)~~ brought before the Court. At 1400 hours trial commences.

R. A4. The Prosecutor produces a Medical Certificate that accused is ~~(are)~~ fit to undergo trial by court-martial.(1) ~~The Prosecutor informs the Court that accused elected to be tried by court-martial instead of being dealt with summarily by the CO.(2)~~

(1. KR Can 557. 2. AA 46(B), RP 60 fn 1. For effect see KR Can 563(c). Delete, if not applicable.)

A5. President to accused: Do you object to Sgt WAA Haymans 2/7 Cdn Inf Bde as interpreter? Ans No, sir

The Interpreter is sworn.(1) Do you object to S/Sgt F J Nethercut HQ 3 Cdn Inf Div (CAOF) as shorthand writer? Ans No, sir

The shorthand writer is sworn.(1)

(1. RP 72. Delete, if none employed.)

A6. The Convening Order and names of the President and Members of the Court are read to the accused.(1) President to accused: Do you object to be tried by me as President or by any of the Members of the Court?

Ans No sir (2)

(1. RP 110. 2. If no objection, waiting member retires. RP 68(B). If objection, see procedure AA 51, RP 25, 71, 18, MML p 742.)

R. A7. The President, Members, JA, if any, ~~and Offrs under instr, if any~~, are sworn.(1) The following are the ranks, names and units of the offrs comprising the Court, etc:

President	Major A.P.W. Watkinson	4 Reg Rif R (CAOF)
Member	Capt. B.X.Dzieczielewski	4 QOR of C (CAOF)
Member	Lt. L. J Naubert	4 R Wpg Rif R (CAOF)
Judge-Advocate	Capt. J.M.Robinson	HQ 3 Cdn Inf Div (CAOF)
Prosecutor	Capt. G. A. Embury	4 R Wpg Rif (CAOF)
Defending Offr	Major J. A. Dunlop	4 QOR of C (CAOF)

Questions by President: Is the Prosecutor a lawyer? Ans No Is the Defending Offr a lawyer? Ans NO (2)

(1. RP 26, 27, 109, 111. List of offrs under instr will be returned separately with proceedings for information of Conv Offr.)
(2. If Pros a lawyer and Def Offr not, accused is entitled to an adjournment when RP 89 (B) and fn 2 were not followed. See DI p 3.)

R. A8. The accused H.102009 Rfn Fagg, D. before arraignment make(s) (no) ~~(a)~~ plea (1)

(1. If a special plea is made for separate trial on one or more charges (RP 62(c), 108), or as to the jurisdiction of the Court (RP 34, 35(A), 113), or in bar of trial (RP 36), or as to accused's mental fitness to stand trial (AA 130, RP 37), or by one of several accused charged jointly to be tried separately (RP 16, 71), such plea, the addresses made in support or against, the evidence, if any, and finding are recorded per Notes. For forms of record see references in fns to RsP cited. Insert in AB rank and name of the accused making the plea.)

R. A9. The accused is ~~(are)~~ arraigned ~~severally~~ on all charges in the charge sheet.(1) The accused does ~~(do)~~ not object to any charge.(2) There is no amendment to be made to the Charge Sheet.(2) The President records the pleas in Part I of the Schedule.

(1. RP 31, 112. See para 1 of Instrs p 2. When more than one Charge Sheet see RP 62; when several accused to be tried separately see RP 71(C), and use separate copies of CF A96 to record proceedings. 2. RP 32, RP 33. If otherwise, advise and make appropriate record per Notes.)

R. A10. The Court ~~is closed and~~ considers the Instrs on Procedure after Arraignment at top of p 2. The proceedings are continued on Record Form D

PRESIDENT OR JA WILL INITIAL ALL DELETIONS AND ALTERATIONS.

C A O F 1 - 5
R-23

INSTRUCTIONS ON PROCEDURE AFTER ARRAIGNMENT.

1. *The accused may not plead or be found Guilty on more than one of two or more charges laid in the alternative.* (*RP* 37(*A*).) *As to withdrawal of alternative charges by Prosecutor see RP* 35(*C*). *No other charge can be withdrawn for any reason without authy from Convening Offr. If Convening Offr concurs, Court may accept plea of Guilty to lesser, etc, offence.* (*RP* 44(*H*).) *Accused may change a plea of Not Guilty to Guilty during trial.* (*RP* 38.) *As to refusing to plead or not pleading intelligibly see RP* 35(*A*). *As to plea when sentence may be death see RP* 35(*D*).

2. *The proceedings on each charge sheet* (*RP* 62) *after arraignment will be conducted as follows in the respective circumstances stated :*

I. If pleas to all charges are GUILTY, use Record Form B below.

II. If pleas to all charges are NOT GUILTY, use Record Form D on p 3.

III. If pleas to some charges are GUILTY and to other charges are NOT GUILTY and,

(*a*) *Such mixed pleas occur when there are no alternative charges in the Charge Sheet, use Record Form C below.* (*RP* 37(*A*).)

(*b*) *Such mixed pleas occur in a set of two or more charges laid in the alternative, see RP* 37 (*A*) *and fn* 2 *as to discretion of Court,* (i) *to try the accused on all such alternative charges as if he had pleaded Not Guilty thereto, or,* (ii) *to record the pleas as the findings of Court. After deciding between* (i) *and* (ii), *Court will proceed under foregoing instrs as may be appropriate to result of its decision. See MML p* 744 *Instrs* (2).

3. *As to responsibility of President to accused see RP* 59, 60(*C*) ; *powers and duties of JA see RP* 103 ; *duty of Prosecutor see RP* 60(*A*) (*B*) ; *duty and privileges of accused and Defending Offr see RP* 60(*C*), 87(*C*), 91, 92 ; *swearing and withdrawal of witnesses from Court see RP* 81, 82 ; *questioning of accused see RP* 80, 87(*C*), 92(*B*), *and of witnesses see RP* 83-85 ; *calling or re-calling of witnesses by Court etc see RP* 75-79, 86, 116 ; *use of Summary of Evidence at Trial see RP* 17(*E*) *fn* 6 ; *and responsibility of JA or Pres to record proceedings see RP* 94, 96.

RECORD FORM B—PROCEEDINGS ON PLEAS OF GUILTY TO ALL CHARGES.

B1. The President or JA, if any, complies with RP 35(B) by explaining to the accused the nature and meaning of the charge(s)(1), and that on his plea of Guilty there will be no regular trial but merely a consideration of the sentence to be awarded after he has been given an opportunity to make a statement in reference to the charge(s), call witnesses as to character and make an address in mitigation of punishment.(2)
(*1. RP 35 fn 3. 2. MML p 54 para 47.*)

B2. President to accused : The Court will now receive any statement you desire to make in reference to the charge(s).(1) If it appears from your statement that there are circumstances which indicate that you do not understand the effect of the plea of Guilty(2), or which show provocation or extenuation in respect of which in your interest the witnesses for the Prosecution should be examined(3), we shall advise you to change your plea to Not Guilty. In making a statement you will not be sworn or subject to cross-examination ; and anything you say will not be used in evidence against you after you change your plea. If, however, it appears to the Court that your statement affects only the amount of punishment to which you are liable, you will not be advised to change your plea and you will be given an opportunity later to prove your statement by sworn testimony, if you so desire.(4)

President to accused : Do you wish to make a statement ? Ans.....(5)
(*1. RP 37(B). 2. RP 37(D) fn 6. 3. RP 35(B) fn 5 para 3, MML p 54 para 47. 4. See para E3 of Record Form E. 5. Statement, if any, recorded per Notes.*)

B3. The Court considers the accused's statement.(1) The Court decides (not) to advise accused to change his (their) plea(s) of Guilty to Not Guilty on.....charge(s). The accused is (are) so informed, and he (they) change(s) his (their) plea(s) on.....charge(s). Part I of the Schedule is amended accordingly.
(*1. Court may be closed to consider the statement. Delete whole or part not used.*)

B4. On the charge(s) to which the plea(s) of Guilty is (are) not changed the President records finding(s) of Guilty in Part I of the Schedule.(1)
(*1. RP 35(E). If any plea(s) is (are) changed, use Record Form C or D as appropriate.*)

B5. The Summary of Evidence is marked Ex....., initialled and read aloud by the President.(1)
(*1. If there is no Summary, or if it is inadequate, comply with RP 37(B). If there is any evidence inconsistent with any plea standing as Guilty, Court will advise accused to change such plea and, if changed to Not Guilty, try such charge(s) by use of paras D1 to D8 inclusive of Record Form D on p 3. RP 37(D).*)

B6. The accused having been found Guilty on one or more of the charges, the proceedings are concluded by using Record Form E on p 3.

RECORD FORM C—PROCEEDINGS ON MIXED PLEAS OF GUILTY AND NOT GUILTY.

C1. As to the charges on which accused pleaded NOT GUILTY the trial is continued by using paras D1 to D8 inclusive of Record Form D on p 3 before proceeding with C 2.(1)
(*1. RP 37(A) (E).*)

C2. The charges on which accused pleaded GUILTY are read to him (them) again, and the trial is continued by using paras B1 to B5 of Record Form B above.(1)
(*1. Under B5 such parts only of the Summary of Evidence are read as relate to the charges dealt with under C2. If any plea is changed to Not Guilty, trial thereon proceeds by complying with paras D1 to D8 inclusive in Record Form D on p 3 and making an appropriate record thereof on a separate sheet.*)

C3. The accused having been found Guilty on one or more of the charges, the proceedings are concluded by using Record Form E on p 3.

PRESIDENT OR JA WILL INITIAL ALL DELETIONS AND ALTERATIONS.

RECORD FORM D—PROCEEDINGS ON PLEAS OF NOT GUILTY TO ALL CHARGES.

D1. President to accused : Do you wish to apply for an adjournment on the ground that any of the rules relating to procedure before trial have not been complied with, and that you have been prejudiced thereby, or on the ground that you have not had sufficient opportunity to prepare your defence ? Ans. No, sir .....(1)
(*1. If "yes", see RP 39(A) for procedure. Statement or evidence, if any, is recorded per Notes.*)

D2. The Prosecutor makes (an) (no) opening address.(1)
(*1. RP 39(B), 60(A) (B), 90, 92(C) (D). Record address per Notes, subject to RP 95(C).*)

D3. The evidence for the Prosecution is taken.(1)
(*1. RP 39(C), 114, KR Can 555. Record evidence per Notes. As to Prosecutor giving evidence himself see RP 39(D) (E).*)

D4. The Prosecution is closed.(1) The Defending Offr submits that the evidence for the Prosecution does not establish a prima facie case against the accused on the three charge(s).(2) The Court is closed, and considers the submission.(3) The Court is re-opened, and the President announces that the submission is disallowed on the three charge(s) and allowed on the three charge(s), and that, accordingly, the trial will proceed on the former, but the accused is (are) found Not Guilty on the latter charge(s).(4) AND THE RECORD IS FOUND NOT GUILTY. RELEASED.

The prosecution makes no answer

(*1. Delete remainder of this para, if submission not made. 2. Arguments on submission, answer and reply are recorded per Notes. 3. RP 40 fn 1. See MML p 72 paras 12-14 and p 81 para 42. 4. Delete part not used. If accused acquitted on all charges, use second alternative in para D8.*)
NB : If trial proceeds, accused must be allowed great latitude in making his defence, and the Court should not stop his defence solely on ground of irrelevance. (*RP 60(C), 114, 115.*)

D5. President to accused : You will now proceed with your defence.(1) You may, if you wish, give evidence yourself on oath as to the facts or your character or both, in which case you will be subject to cross-examination.(2) You may, however, make a statement without being sworn, and you will not be subject to cross-examination.(3) But a statement which could have been made on oath will not carry with the Court the same weight as sworn testimony.(4) You may call witnesses in your defence and as to character, whether you give evidence or make a statement or do neither.

President to accused : Do you wish to give evidence yourself as a witness, make a statement, or do neither ?
Ans..... Do you intend to call witnesses on your behalf ?
Ans..... Are they witnesses as to character only ? Ans.....
(*1. RP 155. 2. RP 40(A), see 80(D). 3. RP 40 fn 10. 4. RP 40 fns 2, 9.*)

D6. Consequent on the answers recorded in para D5 the appropriate procedure for the defence is followed.(1)
(*1. RP 114, 115, 116. For procedure see Notes on back of Convening Order, CF A95. Evidence for accused as to his character should, if in his interest, be given before the finding. See RP 46(A) fn 1, 86(C). Note the further opportunity in para E1 of Record Form E. Record per Notes addresses, statement, evidence and any summing up by the JA under RP 42, 103(e).*)

D7. The Court is closed to consider the finding(s).(1) The finding(s) of the Court is (are) recorded in Part I of the Schedule.(2) The Court is re-opened.
(*1. RP 43, 117(A). See Notes in Part I of Schedule. 2. RP 44(A).*)

D8. The President announces the finding(s), if any, of Not Guilty, and states to the accused that the finding(s) of the Court on the.....charge(s), being subject to confirmation, will be promulgated later.(1)
Or, The President announces that the accused is found Not Guilty on all charges and is to be released forthwith, and that the proceedings are accordingly terminated. Part I of the Schedule is dated and signed.(2)
(*1. AA 54(3) (6), RP 45, 120(A). 2. AA 54(3), RP 45, 117. This alternative announcement is not applicable when there are pleas of Guilty outstanding and dealt with under Record Form B or C.*)

D9. The accused having been found Guilty on one or more of the charges, the proceedings are concluded by using Record Form E below.

RECORD FORM E—PROCEEDINGS ON CONVICTION BEFORE SENTENCE.

E1. President to accused : Do you wish to give evidence yourself or to call any witnesses as to your character ?(1)
Ans.....
(*1. If evidence has already been given by accused or his witnesses as to his character, delete this para. RP 37(C) fn 4, 46 fn 1. Accused and witnesses are sworn. Evidence recorded per Notes.*)

E2. The Prosecutor produces Statement(s) as to Character and Particulars of Service(1), and certified true copy (copies) of Conduct Sheet(s)(2), purporting to refer to the accused, which he submits to the Defending Offr for examination, and then to the Court for admission in evidence. The Court is satisfied that these documents refer to the accused, because (i) they purport to be signed in the manner required by AA 163(l) (g) (h), and (ii) they purport to refer to (a) soldier(s) having the same number, rank, name and corps as the accused. Admitted in evidence and marked Ex..... and Ex..... respectively.(3)
(*1. MFB 355 or AFB 296. 2. MFM 6. 3. RP 46, KR Can 558. If above documents not produced, see RP 46 fn 1 para 1.*)

E3. President to accused : Do you wish to address the Court on the Statement(s) and Conduct Sheet(s), and in mitigation of punishment ?(1) Ans.....(2)
(*1. RP 37(C), 46(D). 2. Address, if any, recorded per Notes. Court should permit accused or his witnesses to prove on oath anything here or previously stated which would affect the amount of punishment. RP 37(F) fn 7.*)

E4. The President states that the Court is closed to consider the sentence, and that the sentence to be awarded by the Court, being subject to confirmation, will not be announced, but will be promulgated later, and the proceedings in open court are accordingly terminated.(1)
(*1. AA 54(6), RP 120(A).*)

E5. The Court considers the sentence.(1) The President records the sentence in Part I of the Schedule, which is dated and signed by him and the JA, if any.(2)
(*1. When several accused tried separately see RP 7(D). One sentence only, comprised of the punishment or punishments laid down in AA 41, 44 and its proviso, is to be awarded to cover all charges in all charge sheets on which accused found guilty. RP 48. As to sentences see AA 44, 138, 182, RP 46-50, 69, 118, 119(A), KR Can 308, 330, 563-566, Overseas RO 309, 2323, MML p 60, 757-759. As to sentences assigned for civil offences by the law of England see AA 41(5), MML p 130. When accused already under sentence of imprisonment or detention see AA 44(1B), 68(1), KR Can 564. 2. RP 50. As to release from arrest by Confirming Offr see KR Can 567. As to assembly and disposal of record after trial see instrs on back of Convening Order.*)

PRESIDENT OR JA WILL INITIAL ALL DELETIONS AND ALTERATIONS.

CHARGE SHEET

The accused, H.102009 Rfn D. [illegible] FAGG, 4 R Wpg Rif (CAOF), a soldier of the Canadian Army Overseas is charged with:

FIRST CHARGE
Sec 40
Army Act

WHEN ON ACTIVE SERVICE CONDUCT TO THE PREJUDICE OF GOOD ORDER AND MILITARY DISCIPLINE

in that he

in the Field, in Germany, on 21 Sep 45 improperly pointed his pistol at Grete Wubbenhorst, a German civilian.

SECOND CHARGE
Sec. 40
Army Act

WHEN ON ACTIVE SERVICE CONDUCT TO THE PREJUDICE OF GOOD ORDER AND MILITARY DISCIPLINE

in that he

in the Field, in Germany, on 21 Sep 45 improperly entered a house where German soldiers were billeted and therein assaulted Alfons Liebers, a discharged German soldier by holding a pistol against his chest and hitting him in the face.

THIRD CHARGE
Sec. 40
Army Act

WHEN ON ACTIVE SERVICE CONDUCT TO THE PREJUDICE OF GOOD ORDER AND MILITARY DISCIPLINE

in that he

in the Field, in Germany, on 21 Sep 45 improperly entered a house where German soldiers were billeted and was concerned with H.20994 Rfn Hull, L. D. in beating Untoffz Rudolf Plank, a German soldier

(R. P. Clark) Lt-col
Comd Offr
4 R Wpt Rif (CAOF)

In the Field
6 Oct 45

To be tried by Field General Court Martial.

(T G Gibson) Brigadier
Commanding
2/7 Cdn Inf Bde (Rif) CAOF

In the Field

10 Oct 45

FIELD GENERAL COURT-MARTIAL

CFA95 (Re-Iss of AF A3)
40/Pam/1697 (2868)

(Whether the accused to be tried is under his comd or not, a FGCM may on application to him be convened by any offr of Cdn Army Overseas, or of any other force if authorized in law, in immediate comd of troops on active service, subject to RP 105(C) and restrictions imposed by appropriate authy. AA 49, 50, RP 104-107, 114. As to the duties and privileges of the Convening Offr in dealing with the application see MML Chap V paras 20 and 23, RP 87(B).

There should be a separate Convening Order for each person to be tried separately by the same Court. RP 71(C), 109. As to separate charge sheets see RP 62, and as to separate trial on charges in the same charge sheet see RP 108. As to two or more accused charged jointly see RP 16, 109. As to reasons for showing (a) permanent or confirmed rank, and (b) apptmt, A/rank or A/apptmt, if any, see AA 182, 183, fns, KR Can 308, 328, 330.)

ACCUSED.

Number.	(a) Prmnt R.	(b) Apptmt, A/R or A/Apptmt.	Full Christian Names.	Surname.	Unit.
H102009	Rfn		Dennis	FAGG	4 R Wpg Rif CAOF

CONVENING ORDER.

1. Whereas complaint has been made to me, the undersigned, that the person~~(s)~~ named above as the accused, being subject to military law, has ~~(have)~~ committed the offence(s) set forth in the Charge Sheet~~(s)~~ attached and on (date) 10 Oct 45 endorsed by me, ~~(or by an offr of my staff for me)~~, " To be tried by Field General Court-Martial ".

2. And whereas I am of opinion that it is not practicable that such offence(s) should be tried by an ordinary General Court-Martial ; ~~(and that it is not practicable to delay the trial for reference to a superior qualified offr.)~~

(Delete part in brackets when not required for compliance with RP 105(C).)

3. I hereby convene a Field General Court-Martial to try the said person~~(s)~~, and to consist of the Offrs appointed or detailed hereunder.

4. ~~I am unable to appoint (a) three Offrs to form the Court, (b) a Fd Offr as President, for the reasons I have attached hereto.~~

(AA 49, RP 106(B), 107(A). Delete the whole or part, if not applicable.)

5. I also appoint as Judge-Advocate thereat the Offr mentioned hereunder.

(RP 106(E). Delete, if none appointed.)

PRESIDENT.

(Rank.)		(Must be named. RP 106.)	(Unit.)
Maj	A P W Watkinson		4 Regina Rif R CAOF

MEMBERS.

(Rank.)		(Named or detailed. RP 106.)	(Unit.)
Capt	To be named by 4 QOR of C CAOF		4 QOR of C CAOF
Lt	To be named by 4 Regina Rif R CAOF		4 Regina Rif R CAOF

WAITING MEMBER.

(Rank.)		(Named or detailed, if any. RP 106.)	(Unit.)
NIL	NIL		NIL

JUDGE-ADVOCATE.

(Rank.)		(Must be named, if any. RP 106.)	(Unit.)
Capt	J.M.Robinson		3 Imsr(B) JAG Overseas HQ 3 Cdn Inf Div CAOF

On Active Service in the Fd

in Aurich Germany
(Country.)

Date 10 Oct 45

(Signed personally. RP 105 fn 2.) Brigadier (Rank.)

Commanding 2/7 Cdn Inf Bde(Rif) CAOF
Convening Officer.

CONVENING OFFR WILL INITIAL ALL DELETIONS AND ALTERATIONS

(See overleaf for oaths and notes for use on trial.)

MEDICAL CERTIFICATE

I have this day examined No H 102009 Rfn Fagg, Dennis 4 Royal Winnipeg Rifles, and certify that he is fit to undergo trial by Court-Martial.

Dated 12 Oct 45

Medical Officer

D.3 - The Evidence for the Prosecution is taken.

1st Witness for the Prosecution; Grete Wubbenhorst, Tannhausen, Kreis Aurich, having been duly sworn in German is examined by the Prosecutor through the interpreter.

Q. 1 - Will you tell us what you know concerning the accused on the night of the 20-21 Sep?
A. 1 - As I already said before in the night there was a knock on the door and our door was forced open and one of the three soldiers who entered was the accused man here on the right hand side. As I already said before I didn't see the two other soldiers back again until this one came back and seized my arm when I wantedto enter my house again
Q. 2 - Was this after you went outside?
A. 2 - When I was outside and wanted to go into the house again after going out with Rfn Hull. This soldier came with Johnny the first soldier and talked with him. After that the accused took my arm and told me to come along with him. I said no because I wanted to go inside and sleep but he held my arm and he drew his pistol from the left hand side. Then he said "I have a pistol" and "Are you afraid of the pistol?". I said "No, I am not afraid of the pistol; I went through so many things I am not afraid any more of a small pistol". After that he gave the pistol to Johnny who said "It is loaded" and "I want you to go along with the other soldier". Then I said "I am not interested in the fact it is loaded because I don't suppose you would shoot at a woman". Then he pressed me back again on the bench next to Johnny
Q. 3 - Who did this?
A. 3 - The accused. Then Johnny took the pistol and fired two shots in the ground between my feet. Then I jumped up and wanted to get away but both of them grasped my arms and pulled me in between the wooden barracks. Then Johnny told me another time to go with his comrade but I told him "Johnny, I had sexual intercourse with you this night and I don't want to go with the other one". But he said "For this night you have to go with my comrade". Then he flew into a passion and fired another two shots in the ground. After this I immediately turned around and ran back to the house, but then the three soldiers appeared, seized me again and took me back to the two other soldiers. After that Johnny put his right hand on my left shoulder and fired another shot. Then he asked another time "Will you go with my comrade?" but I said "No, I don't want to". Then he placed his hand on my head and fired another shot. At first I was completely deafened by the shot and didn't hear anything but the laughing of the other soldiers but later on I heard the other soldiers tell him to shoot in my eyes
Q. 4 - Which one is the other soldier?
A. 4 - Up to now I didn't see this soldier around here
Q. 5 - That was just the third soldier?
A. 5 - Yes. Then he held the pistol before my face but I pushed it away with my right hand, took with my left hand one of the other two soldiers and went away with him around the corner
Q. 6 - Which one was that?
A. 6 - Johhny held the pistol before my face and I went with the accused here around the corner. I was very nervous and started to cry and he asked me "Why do you cry?". I said: "Can't you understand that. Just imagine that you had a sister in Canada and German soldiers wanted to do with her as you want to do with me". Then he asked "Do you like Johnny?"
Q. 7 - What did you finally do?
A. 7 - He said "Don't be angry with me" then he let me go and I went into the house
Q. 8 - Did the accused point his pistol at you at any time?
A. 8 - He only drew the pistol from the case and asked me "Do you know that is a pistol?" and then he handed it over to Johnny

CROSS-EXAMINATION BY DEFENDING OFFICER

Q. 9 - You say he drew the pistol from its case and held it in front of you and then passed it over to Johnny. Is that correct?

A. 9 - Yes, he drew the pistol from the case, held it in his hand and said "Do you see this pistol? Are you afraid of it?" and then the pistol was handed over to Johnny

Q. 10 - He didn't point it at you; he just held it in his hand?

A. 10 - He didn't point it. He only had it in his hand and showed it to me.

IN THE OPINION OF THE COURT AND THE JUDGE-ADVOCATE IT IS NOT NECESSARY TO COMPLY WITH THE PROVISIONS OF R.P.83(B)

THE WITNESS WITHDRAWS

2nd Witness for the Prosecution, Untoffz Rudolph Plank, Sandhorst, Kreis Aurich, having been duly sworn in German is examined by the Prosecutor through the interpreter.

Q. 11 - Would you tell us if you have seen the accused before and where and under what circumstances?

A. 11 - I didn't see him before the night. This was the soldier who was standing in the doorway. I couldn't give any statement about the soldier because he only stood at the doorway and didn't do anything

DEFENDING OFFICER DECLINES TO CROSS-EXAMINE THIS WITNESS

IN THE OPINION OF THE COURT AND THE JUDGE-ADVOCATE IT IS NOT NECESSARY TO COMPLY WITH THE PROVISIONS OF R.P.83(B)

THE WITNESS WITHDRAWS

THE PROSECUTION HAS NO FURTHER EVIDENCE TO SUBMIT.

Certified to be a true transcript of the shorthand notes taken by me at the FGCM described on p. 1 of CF A96

(F. J. Nethercut) S/Sgt
Court Reporter
HQ 3 Cdn Inf Div (CAOF)

16 Oct 45

SUMMARY OF EVIDENCE

in the case of H 102009 Rfn FAGG, Dennis
"C" Coy 4 R Wpg Rif (CAOF) charged with:

1st charge: COMMITTING A CIVIL OFFENCE THAT IS TO SAY COMMON ASSAULT (AA Sec 41)

2nd charge: NEGLECTING TO OBEY ORDERS REGARDING FRATERNIZATION.

By direction of the Commanding Officer the evidence is taken on oath.

The evidence of Alfons Liebers and Grete Wubbenhorst herein after recorded was interpreted by 102409 Sgt Int. K v. Vrijaldenhoven, Netherlands Forces 2/4 Canadian Provost Company CAOF, having first been duly sworn.

FIRST WITNESS: I, Alfons Liebers, living at Tannhausen, 11a Kreis Aurich having been duly sworn state:

At approx 0200 hrs 21 Sep 45 I was awakened and saw two Canadian soldiers standing near the bed of my two comrades. One of the soldiers I knew as Johnny and the other one I did not know. About two minutes later the accused whom I knew as Bill came into the room. The accused pulled me out of my bed. He held a pistol against my chest and asked me for my paybook. I said I Didn't have one as I had been discharged. I showed him a pass. The accused then went to the beds of my comrades who were sitting on their beds. The accused first beat up my comrade Rath Geber and then he pulled Franz Mader up from his bed and beat him in the face with a pistol. Then he came back and hit me in the face and shoulder. He then unloaded the pistol leaving one round and fired it through the door. He then threw a potatoe through a window in the room. Then the soldiers left the house and I heard some shots.

The accused declined to cross-examine this witness.

Alfons Liebers

SECOND WITNESS: I, Grete Wubbenhorst, living in Tannhausen, Kreis Aurich having been duly sworn state.

At approx 0200 hrs 21 Sep 45 I was awakened by a loud knocking on the door of our home. I got up and was partially dressed when the outer door was forced open. As I reached the inner or kitchen door it was also forced open. I put on the light and saw three Canadian soldiers. One of the soldiers I knew as Johnny and a second one I knew as the accused. Immediately I rushed into the bedroom to put on my shoes and stockings. The soldier called Johnny followed me into the room and before we came out the accused and his comarade had left.

Question by the Officer taking the Summary

Q 1 - In whose home did this take place?

A 1 - The home of my Father Eilert Wubbenhorst.

The accused declined to cross-examine this witness.

Grete Wubbenhorst

Appx "A" being copy of Appx to Cdn R O (21 A Gp) No 1598 is att hereto.

The accused was cautioned as follows:

Do you wish to make any statement or to give evidence on oath? You are not obliged to say anything or give evidence unless you wish to do so, but whatever you say or any evidence you give will be taken down in writing and may be given in evidence.

The accused declined to make a statement.

I certify that the foregoing Summary of Evidence consisting of two pages, was taken down by me in the presence of the accused and that R P4(C), (D), (E) and (F) have been complied with.

28 Sept 45

Capt.,
(G.R. Embury) Capt.,
4 R Wpg Rif (CAOF)

APPENDIX "A"

COPY of letter No. 3 by the Commander-in-Chief
on Non-Fraternization

"To: All Members of the British Forces in Germany.

Great progress has been made in the de-Nazification of the British Zone and in removing Nazis from all responsibility in German life. Further, the Germans have shown themselves willing to obey my orders and to co-operate in the reconstruction of their country on Non-Nazi lines.

I have already modified my orders about non-fraternization and allowed you to speak and play with little children. I now consider it desirable and timely to permit a further modification of these rules. You may now engage in conversation with adult Germans in the streets and in public places.

You will not for the present enter the homes and houses of the Germans nor permit them to enter any of the premises you are using except for duty or work.

I know the non-fraternization policy has been a strain upon many of you who have to live and work in close contact with Germans, and I appreciate the loyal way in which you have honoured it.

14 July 45

B.L. Montgomery
Field Marshal
Commander-in-Chief
British Zone

Certified a True and Correct copy

J.W. Jamieson, Capt.,
(J.W. Jamieson) Capt
A/Adjt
Offr i/c Records

SUMMARY OF EVIDENCE

in the case of H 20994 Rfn HULL, Lawrence David and H 102009 Rfn FAGG, Dennis both "C" Coy 4 R Wpg Rif (CAOF) charged with:

1st Charge — COMMITTING A CIVIL OFFENCE THAT IS TO SAY ASSAULT with intent to commit a felony; (AA Sec 41)

2nd Charge — COMMITTING A CIVIL OFFENCE THAT IS TO SAY HOUSEBREAKING (AA Sec 41)

By direction of the Commanding Officer the evidence is taken on oath.

The evidence of Grete Wubbenhorst, and Eilert Wibbenhorst herein after recorded was interpreted by 102409 Sgt Int. K v. Vrijaldenhoven Netherlands Forces, 2/4 Canadian Provost Company CAOF having first been duly sworn.

FIRST WITNESS: I, GRETE WUBBENHORST, living in Tannhausen Kreis Aurich having been duly sworn states:

At approx 0200 hrs 21 Sep 45 I was awakened by a knocking on the door of my home. My Father called to me to go and see what was the trouble. I dressed but in the meantime I heard that the outer door had been forced open. I hurried to the kitchen door but before I reached it, it was also forced open. I switched on the light and saw three Canadian soldiers One of the soldiers, I knew as Johnny (identified as Hull) and a second one was the accused (Fagg). I went to my bedroom and the accused called Johnny (Hull) followed me. The accused (Fagg) and the third soldier left the house. I did not see the accused Fagg again until I was outside later with Johnny. The accused Fagg then told me I must go with him around the corner. I refused and the accused Fagg took his pistol pointed it at me and asked me if I was scared. He then gave the pistol to Johnny who told me the pistol was loaded. Johnny then ordered me to go with the accused Fagg and fired the pistol twice. Then they took me by the arms and led me between the buildings. They tried to persuade me to go with the accused Fagg and when I refused Johnny fired the pistol twice again. After that I still refused and Johnny fired the pistol once over my shoulder and once over my head. Then a third comrade came and told Johnny to shoot me between the eyes. I was afraid and went around the corner with the accused Fagg. I began to cry and after talking a few minutes the accused Fagg gave me a cigarette and told me to go to bed. I then went into house and to bed.

Questions by the Officer taking the Summary:

Q 1 - How where the doors of the house closed?

A 1 - The outer door was bolted and the inside or kitchen door was hooked.

Q 2 - Had you seen both of the accused soldiers before this night?

A 2 - Yes.

Q 3 - Did the accused soldiers say why they wished you to go round the corner with the accused Fagg?

A 3 - Yes. They said I must have sexual intercourse with him.

Q 4 - In whose house where you sleeping when a wakened?

A 4 - The house of my Father Eilert Wubbenhorst.

Both of the accused declined to question the witness.

Gretl Wübbenhorst

SECOND WITNESS: I, Eilert Wubbenhorst, living in Tannhausen, Kreis Aurich having been duly sworn state:

At approx 0200 hrs 21 Sep 45 I was in bed at my home and was awakened by a knocking at the door. I called to my daughter to go and see who was there. After a few minutes my daughter started for the door but before she reached it the outside door was broken open. Then before my daughter reached the inner or kitchen door it was also forced open. The accused (Hull and two soldiers came into the room. The accused Hull followed my daughter into her bedroom. A second soldier looked around while a third remained by the kitchen door. I told the accused Hull and my daughter that they should go outside which they did. About half and hour afterwards I heard a few shots.

Questions by the Officer taking the Summary.

Q 1 - How were the doors fastened?

A 1 - By a bolt.

Q 2 - Who locked the doors?

A 2 - I locked the doors before going to bed.

Both the accused declined to cross examine this witness

Eilert Wübbenhorst

Both the accused were cautioned as follows:

Do you wish to make any statement or to give evidence on oath? You are not obliged to say anything or give evidence unless you wish to do so, but whatever you say or any evidence you give will be taken down in writing and may be given in evidence.

Both of the accused declined to make a statement.

I certify that the foregoing Summary of Evidence, consisting of three pages, was taken down by me in the presence of the accused and that R P 4 (C), (D), (E), and (F) have been complied with.

In the Field
28 Sep 45

Capt.,
(G.A. Embury) Capt.,
4 R Wpg Rif (CAOF)

I wish to have Capt R.S. Moglove

defend me at my trial by Field General

Court Martial if he is available.

4 Oct 45
In the Field

D. Fagg
H 1028009 Rfn Fagg, D.

THE NUMBERED PAGES WHICH ARE OTHERWISE BLANK IN

THE FILES ON THIS FILM HAVE NOT BEEN PHOTOGRAPHED.

CENTRAL REGISTRY MICROFILMING UNIT.

END

FIRST

SIDE

44.F.7A

COUNTER NUMBER 061739

HOUR 1045

OPERATOR'S INITIALS AWD

RELIEVING OPERATOR _____